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**Aug 08 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Steven H. John, Circuit Court Judge

Appellate Case No. 2021-000803

Priscilla Peterkin.....Appellant,

V.

Bummz on the Beach, Inc., individually and d/b/a Bummz on the Beach.....Respondents.

**AMENDED RECORD ON APPEAL**

Roopal S. Ruparelia  
Haynesworth Sinkler  
Boyd, P.A.,  
P.O. Box 11889  
Columbia, SC 29211  
[rruparelia@hsblawfirm.com](mailto:rruparelia@hsblawfirm.com)

Sarah P. Spruill  
Haynesworth Sinkler  
Boyd, P.A.,  
P.O. Box 2048  
Greenville, SC 29602  
[sspruill@hsblawfirm.com](mailto:sspruill@hsblawfirm.com)

Deyaska S. Sweatman  
The Deyaska Spencer Law  
Firm  
P.O. Box 6763  
Columbia, SC 29260  
[spencer@deyaskalaw.com](mailto:spencer@deyaskalaw.com)

Charlie Ipock  
Haynesworth Sinkler  
Boyd, P.A.,  
135 S. Dargan Street  
Suite 300  
Florence, SC 29506  
[cipock@hsblawfirm.com](mailto:cipock@hsblawfirm.com)

**ATTORNEY FOR  
RESPONDENTS**

**ATTORNEY FOR  
APPELLANT**

**ATTORNEYS FOR  
RESPONDENTS**

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Priscilla Peterkin,

Plaintiff,

v.

Bummz Beach, LLC, City of Myrtle Beach, and Bummz on the Beach, Inc., Individually and d/b/a Bummz on the Beach Café,

Defendants.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

2020-CP-26-04430

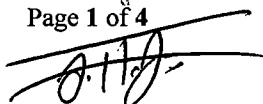
**ORDER GRANTING MOTION FOR SUMMARY JUDGMENT FOR BUMMZ ON THE BEACH, INC., INDIVIDUALLY AND D/B/A BUMMZ ON THE BEACH CAFÉ**

This matter came before the Court upon the motion for summary judgment filed March 23, 2021 by Defendant Bummz on the Beach, Inc., Individually and d/b/a Bummz on the Beach Café (“Defendant”). The Court heard the Motion on June 8, 2021. Plaintiff Priscilla Peterkin (“Plaintiff”) and Defendant were represented by counsel. Upon careful consideration of the arguments and submissions from counsel for Plaintiff and Defendant, a review of the pleadings, and applicable law, the Court rules as follows:

**FACTUAL AND PROCEDURAL HISTORY**

This is a trip and fall case. Plaintiff alleges she fell on or about November 24, 2018, while traversing a sidewalk in Myrtle Beach. As a result of the fall and alleged subsequent injuries, Plaintiff asserted causes of action in her Amended Complaint which are styled, “Duty Owed to Licensee,” a general negligence cause of action, and a tort liability cause of action specific to the City of Myrtle Beach.

As to the City of Myrtle Beach, the record before the Court shows that the City has admitted in its responses to Requests for Admission that it maintains the sidewalks that are within the right-of-way of North Ocean Boulevard where Plaintiff fell. Defendant leases the restaurant adjacent to



the sidewalk where Plaintiff fell. The record is further illustrative of the fact that Plaintiff was not a customer nor a patron of Defendant, did not intend to be a customer, and there is no evidence in the record showing she intended to do business with Defendant in any capacity whatsoever. Rather, this incident occurred in the late evening hours when Defendant's restaurant was closed.

### LEGAL STANDARD

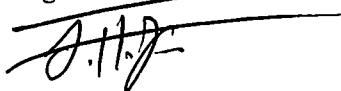
Rule 56(c), SCRCP provides for judgment as a matter of law where "there is no genuine issue as to any material fact." The Supreme Court of the United States has stated that the purpose of summary judgment is to dispose of factually unsupported claims. *Celotex v. Catrett*, 477 U.S. 317, 322 (1986). Additionally, "[s]ummary judgment is appropriate in those cases in which plain, palpable[,] and indisputable facts exist on which reasonable minds cannot differ." *Thompkins v. Festival Ctr. Group I*, 306 S.C. 193, 194, 410 S.E.2d 593, 593–94 (S.C. App. 1991).

As to affidavits procured and submitted at the summary judgment stage, "A trial court may exclude an affidavit when it was submitted 'to contradict that party's own prior sworn statement' in 'an attempt to create a sham issue of material fact.'" *McMaster v. Dewitt*, 411 S.C. 138, 149, 767 S.E.2d 451, 456 (Ct. App. 2014) (quoting *Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004)). In *Cothran*, the South Carolina Supreme Court laid out a six-factor test to help courts distinguish between a sham affidavit and a mere correcting or clarifying affidavit:

(1) whether an explanation is offered for the statements that contradict prior sworn statements; (2) the importance to the litigation of the fact about which there is a contradiction; (3) whether the non-movant had access to this fact prior to the previous sworn testimony; (4) the frequency and degree of variation between the statements in the previous sworn testimony and statements made in the later affidavit concerning this fact; (5) whether the previous sworn testimony and statements indicate the witness was confused at the time; and (6) when, in relation to summary judgment, the second affidavit is submitted.

The Court has considered each of these factors as set forth below.

### DISCUSSION



“To recover damages for injuries caused by a dangerous or defective condition on a storekeeper’s premises, the plaintiff must show either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it.” *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001).

Here, Plaintiff alleges she fell on a City sidewalk adjoining property leased by the Defendant. She was not a customer of the Defendant at the time of the alleged injury. For purposes of this order, the Court will view the evidence and all inferences in the light most favorable to the Plaintiff and will assume, without deciding, that the Defendant owed some duty to the Plaintiff. Even so, there is no evidence in the record of what “specific act . . . created the dangerous condition” or that Defendant “had actual or constructive knowledge of the dangerous condition and failed to remedy it.” *Id.* Rather, Plaintiff has been unable to articulate what caused her to fall, there has been no evidence set forth by an expert to opine as to any specific condition, and no testimony has set out a code or standard that was not followed. In addition, there is no evidence that the Defendant was on notice of any allegedly dangerous condition.

Rather, Plaintiff has argued at summary judgment that a palm tree bush on the premises leased by Defendant overhung the sidewalk causing Plaintiff to fall. Defendant’s owner does not dispute the palm tree bush is on lands he leases, that it overhangs the sidewalk, and that he has a duty to maintain as much. Nonetheless, the Plaintiff was clearly asked and unambiguously answered the following questions as to that very palm tree bush in her deposition and under oath said:

Q: All right. Just one little quick follow-up. I’ll throw this picture up here. All right. This is back to that picture we were looking at earlier. It’s marked as Plaintiff’s Exhibit Four, but I’ll – I think it’s Number 1 for our transcript purposes.

Do you see on the right-hand side a palm bush or some other shrubbery. Do you see that on the right?

A: Uh-huh.

Q: Did that cause you to fall?

A: I can't say that it did.

Q: Just so I understand that, is that a no it did not cause --

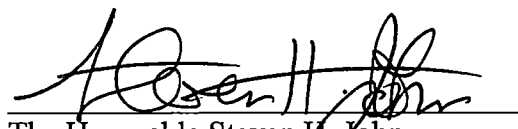
A: No.

Notwithstanding this clear testimony, mere days before the hearing on the motion for summary judgment, Plaintiff filed an affidavit, stating, "Since it was both dark, and because a Bummz palm tree bush was hanging over the raised concrete I couldn't see the danger and I tripped."

The Court has examined the sworn deposition testimony and the filled affidavit of the Plaintiff in conjunction with the six (6) *Cothran* factors. There has been no explanation for the direct contradiction between the sworn deposition testimony and the affidavit submitted in response to the Defendant's motion for summary judgment mere days before the hearing. While the facts set forth are important, the plaintiff had access to these facts before her deposition. Further, no confusion is alleged by the Plaintiff. The Court therefore gives the affidavit no credence and hereby rules that the affidavit is excluded as a sham. As a result, the Plaintiff has not established that there is any genuine issue of material fact for trial. Thereby, the Court grants Defendant's Motion for Summary Judgment as to all claims brought against it by the Plaintiff.

**IT IS SO ORDERED.**

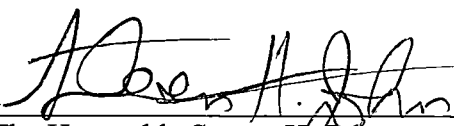
6/18/, 2021  
Conway, South Carolina

  
The Honorable Steven H. John  
Resident Judge, Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
	)	Civil Action No.: 2020-CP-26-04430
PRESCILLA PETERKIN,	)	
	)	
PLAINTIFF	)	
	)	
V.	)	<b>ORDER DENYING PLAINTIFF'S</b>
	)	<b>MOTION TO RECONSIDER</b>
	)	
BUMMZ BEACH, LLC, CITY OF	)	
MYRTLE BEACH, AND BUMMZ	)	
ON THE BEACH, INC., INDIVIDUALLY	)	
AND B/D/A BUMMZ ON THE	)	
BEACH CAFE	)	
	)	
DEFENDANTS.	)	

This matter came before the Court on Plaintiff's Motion Reconsider the Court's Ruling Dated June 18, 2021, Granting Summary Judgment in favor of Bummz on the Beach, Inc. The Court has considered Plaintiff's Motion, the written response of the Defendant, both filed with the Horry County Clerk of Court, and all other matters in the Clerk of Court's file. The Court finds that oral arguments would not assist it in this matter and that any additional arguments would be redundant and unnecessary. It is therefore

ORDERED that Plaintiff's Motion to Reconsider the Court's Ruling Dated June 18, 2021, Granting Summary Judgment in favor of Bummz on the Beach, Inc., is denied and the Court's prior ruling is reaffirmed in toto.

  
 \_\_\_\_\_  
 The Honorable Steven H. John  
 Resident Judge  
 Fifteenth Judicial Circuit

June 24 2021  
 Conway, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CASE NO. 20-CP-26-
	)	
Priscilla Peterkin,	)	
	)	
Plaintiff,	)	
	)	
	)	<b>SUMMONS</b>
vs.	)	<b>(JURY TRIAL REQUESTED)</b>
	)	
Bummz Beach, LLC d/b/a	)	
Bummz Beach Café and Bar,	)	
	)	
Defendant(s).	)	
	)	
_____	)	

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said Complaint upon the The Deyaska Spencer Law Firm, LLC at P.O. Box 6763, Columbia, SC 29260, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Complaint.

*s/Deyaska Spencer*  
Deyaska Spencer, Esq.  
S.C. State Bar No. 102107  
1556 Sunnyside Drive (29204)  
P.O. Box 6763  
Columbia, SC 29260  
Phone: (803) 873-0837  
Fax no: (855) 416-6758  
Email: [spencer@deyaskalaw.com](mailto:spencer@deyaskalaw.com)  
Attorney for Plaintiff

July 30, 2020  
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CASE NO. 20-CP-26-
	)	
Priscilla Peterkin,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>COMPLAINT</b>
	)	<b>(JURY TRIAL REQUESTED)</b>
	)	
Bumz Beach, LLC d/b/a	)	
Bumz Beach Café and Bar,	)	
	)	
Defendant(s).	)	
	)	
_____	)	

The Plaintiff, complaining of the Defendant(s), would respectfully show unto this honorable Court the following:

**FACTUAL ALLEGATIONS RELEVANT TO ALL CAUSES OF ACTIONS**

1. Plaintiff Priscilla Peterkin is a citizen of Hoke County, North Carolina.
2. Upon information and belief, Defendant Bumz Beach Café and Bar, owns property and transacts significant business in the County of Horry, State of South Carolina.
3. The facts and circumstances which are the subject matter of this lawsuit occurred in Horry County, South Carolina
4. The tortious acts herein complained of occurred on premises owned by Defendant Bumz Beach Café and Bar located at 2002 N. Ocean Blvd., Myrtle Beach, SC 29577 (hereinafter the "Property").
5. Venue is proper pursuant to § 15-7-30 of the South Carolina Code of Laws Amended.

6. The Court has subject matter jurisdiction over the parties and subject matter of this lawsuit.

**FACTUAL ALLEGATIONS RELEVANT  
TO ALL CAUSES OF ACTIONS**

7. Plaintiff hereby repeats and re-alleges each and every allegation contained in paragraphs 1-6 as if fully set forth herein verbatim.
8. Upon information and belief, and at all times mentioned herein Defendant (s) were in possession and control of the Property, including the parking lot, sidewalks, and entrance areas.
9. At all times concerned herein the Defendant had a duty to licensees in general and to the Plaintiff in particular to use reasonable care to discover persons and avoid injury to persons carrying on activities upon the land, and to use reasonable care to warn persons of any concealed dangerous conditions or activities which are known to the Defendant, or of any change in the condition of the premises which may be dangerous to persons, and which persons may reasonably be expected to discover.
10. On or about November 25, 2018, Plaintiff was a licensee of the Defendant, and entered upon the premises owned by Defendant Bummz Beach, LLC, doing business as Bummz Beach Café and Bar.
11. On or about November 25, 2018 Plaintiff Priscilla Peterkin was walking on the sidewalk near the business entrance of Bummz Beach Café and Bar when she tripped and fell on a piece of raised concrete.
12. The fall on the Defendant's sidewalk on November 25, 2018 caused the Plaintiff the following injuries and damages:
  - a. Extensive pain, mental anguish, suffering and discomfort;

- b. Disability for a period of time, past and future;
  - c. Inability to carry on normal activities;
  - d. Permanent injuries;
  - e. Emotional trauma and distress;
  - f. Loss of enjoyment of life; and,
  - g. Financial loss
13. Plaintiff Priscilla Peterkin is informed and believes she is entitled to judgment against the Defendant for actual and punitive damages in the appropriate amount.

**FOR A FIRST CAUSE OF ACTION  
(Premises Liability)**

14. Plaintiff hereby repeats and re-alleges each and every allegation contained in paragraphs 1-13 as if fully set forth herein verbatim.
15. Plaintiff Priscilla Peterkin would show that the Defendant invites the public to come upon the premises via beach or roadway access and provides sidewalks which are connected to and used for the public to walk up and down the Myrtle Beach strip.
16. Plaintiff Priscilla Peterkin entered the Defendant's sidewalk as a licensee and therefore, the Defendant owed Plaintiff Priscilla Peterkin the duty to use reasonable care to discover her and avoid injury to her in carrying on activities upon the land, and to use reasonable care to warn her of any concealed dangerous conditions or activities which are known to the Defendant; or of any change in the condition of the land or activities which are known to the Defendant; or of any change in the condition of the

premises which may be dangerous to her, and which she may reasonably be expected to discover.

17. The Defendant owed Plaintiff Priscilla Peterkin the duty to use reasonable care to warn her of the “raised concrete” condition in the sidewalk as it were a concealed dangerous condition of the premises that the Defendant knew about and that a licensee, like the Plaintiff, may reasonably be expected to discover.
18. Plaintiff Priscilla Peterkin would show that the Defendant, by and through their agents, servants and employees, negligently, recklessly, willfully, wantonly, intentionally and grossly negligently breached its duty to Plaintiff Priscilla Peterkin in the following particulars:
  - (a) In failing to use reasonable care to discover Plaintiff and avoid injury to her in carrying on activities upon the land;
  - (b) In failing to use reasonable care to warn Plaintiff of any concealed dangerous conditions or activities which are known to the Defendant, or of any change in the condition of the premises which may be dangerous to Plaintiff, and which she may reasonably be expected to discover;
  - (c) In failing to properly train and supervise staff;
  - (d) In creating an unreasonably dangerous condition on the premises;
  - (e) By hiring negligent, unqualified, and unsupervised staff;
  - (f) In failing to use reasonable care to warn of the foreign and hazardous object despite actual notice thereof;
  - (g) In failing to use reasonable care to warn of the foreign and hazardous object despite constructive notice thereof, in that the foreign

object existed on the ground for a sufficient period of time to be discovered in the exercise of ordinary care; and

(h) In such other and further particulars as the evidence at trial might show; Any one or more of which acts and/or omission were a proximate cause of the injuries suffered by the Plaintiff. Said acts and/or omission were in violation of the statutory and case law of the State of South Carolina.

19. As a direct and proximate result of the Defendant's negligent, reckless, willful, wanton, and grossly negligent acts and/or omissions as enumerated herein and above, Plaintiff Priscilla Peterkin was seriously injured due to her fall on Defendant's property. Plaintiff Priscilla Peterkin was seriously injured due to her fall on Defendant's property. Plaintiff Priscilla Peterkin would show that she has incurred severe physical harm which has caused, and will cause, her to undergo pain and suffering, impairment of health, and loss of enjoyment of life. Plaintiff Priscilla Peterkin has suffered severe emotional distress, worry, mental anguish and embarrassment as a result of her fall and her injuries. Plaintiff Priscilla Peterkin has also incurred financial loss as a result of related medical expenses for hospital bills, doctor bills, and medication expenses. Plaintiff will also incur future medical expenses.
20. Plaintiff Priscilla Peterkin is entitled to judgment against the Defendant in an amount of money adequate to compensate her for her actual damages as a jury may deem appropriate, for the costs of this action, pre-judgment interest, and for such other and further relief as this Court may deem just and proper.

**FOR A SECOND CAUSE OF ACTION  
(Negligence)**

21. The Plaintiff hereby repeats and re-alleges each and every allegation contained in paragraphs 1-20 as fully as if set forth herein verbatim.
22. That Defendant was responsible for the creation and remedy of the hazardous and dangerous condition to their sidewalk located in front of the business entrance.
23. That the Defendant, its agents, employees and servants, were negligent, negligent per se, grossly negligent, careless, reckless, willful and wanton, in one or more of the following particulars:
  - (a) In creating an unsafe walking area and allowing the concealed danger to remain without warning, when it knew or should have known of its hazardous presence;
  - (b) In failing and omitting to use reasonable care to warn of the hazardous concealed condition;
  - (c) In failing and omitting to warn Plaintiff Priscilla Peterkin and any other licensees of the hazards on or in the sidewalk by signs, personnel, barricades, or other means of the unsafe and highly dangerous area;
  - (d) In failing and omitting to exercise reasonable care at the location at issue so as to safeguard licensees and specifically Plaintiff Priscilla Peterkin from injury;
  - (e) In acting with a reckless and/or wanton disregard of the rights and safety of Plaintiff Priscilla Peterkin and any other licensees under the circumstances prevailing at the time of the accident;

(f) In failing to properly warn of the raised sidewalk when it knew or should have known of its existence;

(g) In failing and omitting to exercise reasonable care to warn of the “raised concrete” in the sidewalk at the time of Plaintiff Priscilla Peterkin’s injury when the Defendant knew or should have known that the change in elevation causing the sidewalk to be raised created a concealed dangerous condition;

(h) In failing to exercise that degree of care and caution which a reasonable and prudent person would have under the same or similar circumstances; and

(i) In such other and further particulars as the evidence at trial might show; Any one or more of which acts and/or omission were a proximate cause of the injuries suffered by the Plaintiff. Said acts and/or omissions were in violation of the statutory and case law of the State of South Carolina.

24. As a direct and proximate result of the negligence, negligence per se, gross negligence, carelessness, recklessness, willfulness and wantonness, of the Defendant and its employees and agents, the Plaintiff Priscilla Peterkin has suffered in the past, and will, upon information and belief, continue to suffer physical harm and injuries as a result of the aforesaid injury; has incurred and will continue to suffer physical and mental pain and suffering; has lost and will continue to lose the enjoyment of life; has incurred, and may incur in the future, medical expenses for doctors and other medical treatment; and has otherwise been permanently damaged and injured.

**WHEREFORE**, the Plaintiff prays as follows:

- a) For judgment against the Defendant, and an award of actual and punitive damages as determined by the jury;
- b) For the costs and disbursements, including pre-judgment interests, in the pursuit of this matter; and
- c) For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

The Deyaska Spencer Law Firm

By:

*s/Deyaska Spencer*  
Deyaska Spencer, Esq.  
S.C. State Bar No. 102107  
The Deyaska Spencer Law Firm, LLC  
1556 Sunnyside Drive (29204)  
P.O. Box 6763  
Columbia, SC 29260  
Phone: (803) 873-0837  
Fax no: (855) 416-6758  
Email: [spencer@deyaskalaw.com](mailto:spencer@deyaskalaw.com)

Attorney for Plaintiff:

July 230, 2020  
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CASE NO. 20-CP-26-04430
	)	
Priscilla Peterkin,	)	
	)	
Plaintiff,	)	
	)	
	)	<b>AMENDED COMPLAINT</b>
vs.	)	<b>(JURY TRIAL REQUESTED)</b>
	)	
Bummz Beach, LLC,	)	
City of Myrtle Beach, and	)	
Bummz on the Beach, Inc., individually	)	
and d/b/a Bummz on the Beach Café,	)	
	)	
Defendant(s).	)	
	)	
_____	)	

The Plaintiff, complaining of the Defendant(s), would respectfully show unto this honorable Court the following:

**PARTIES JURISDICTION AND VENUE**

1. The Plaintiff Priscilla Peterkin is a citizen and resident of Hoke County, North Carolina.
2. Upon information and belief, and at all times relevant to this action, Defendant Bummz Beach, LLC (Defendant Landlord) owns property and transacts significant business in Horry County, State of South Carolina.
3. Upon information and belief, and at all times relevant to this action, Defendant Bummz on the Beach, Inc. (Defendant Tenant), is a corporation organized and existing under the laws of the State of South Carolina and conducting a substantial amount of business in Horry County, State of South Carolina on or about November 24, 2018.
4. Upon information and belief, and at all times relevant to this action, Defendant City of Myrtle Beach, is organized and existing under the laws of the State of

South Carolina and conducting a substantial amount of business in Horry County, State of South Carolina on or about November 24, 2018.

5. The Defendants are jointly and severally liable for the acts and/or omissions committed and alleged in this Complaint.

6. The subject incident of this lawsuit occurred in Horry County, State of South Carolina

7. Venue is proper in this Court, as the act or incident giving rise to this cause of action occurred in Horry County.

8. The Court has subject matter jurisdiction over the parties and subject matter of this lawsuit.

**FACTUAL ALLEGATIONS RELEVANT  
TO ALL CAUSES OF ACTIONS**

9. Plaintiff hereby repeats and re-alleges each and every allegation contained in paragraphs 1-8 as if fully set forth herein verbatim.

10. The tortious acts herein complained of occurred on or near 2002 N. Ocean Blvd., Myrtle Beach, SC 29577 (hereinafter the "Property").

11. Upon information and belief, and at all times mentioned herein Defendant (s) were in possession and control of the Property, including the parking lot, sidewalks, and entrance areas.

12. At all times concerned herein the Defendant (s) had a duty to licensees in general and to the Plaintiff in particular to use reasonable care to discover persons and avoid injury to persons carrying on activities upon the land, and to use reasonable care to warn persons of any concealed dangerous conditions or activities which are known to the Defendant(s), or of any change in the condition of the premises which may be dangerous to persons, and which persons may reasonably be expected to discover.

13. On or about November 24, 2018, Plaintiff was a licensee of the Defendant(s), and entered upon the premises owned by him.

14. The Plaintiff Priscilla Peterkin was walking on the sidewalk, at night, toward her nearby hotel when when she tripped and fell on a piece of raised concrete.

15. The fall on the Defendant's sidewalk on November 24, 2018 caused the Plaintiff the following injuries and damages:

- a. Extensive pain, mental anguish, suffering and discomfort;
- b. Disability for a period of time, past and future;
- c. Inability to carry on normal activities;
- d. Permanent injuries;
- e. Emotional trauma and distress;
- f. Loss of enjoyment of life; and,
- g. Financial loss

16. Plaintiff Priscilla Peterkin is informed and believes she is entitled to judgment against the Defendant(s) for actual and punitive damages in the appropriate amount.

**FOR A FIRST CAUSE OF ACTION**  
**(Duty Owed to Licensee)**

17. Plaintiff re-alleges and incorporates the foregoing allegations of the preceding paragraphs as if repeated verbatim herein.

18. Plaintiff Priscilla Peterkin would show that the Defendant(s) invite the public to come upon the premises via beach or roadway access and provides sidewalks which are connected to and used for the public to walk up and down the Myrtle Beach strip, a vacation community.

19. Plaintiff Priscilla Peterkin entered the Defendant's sidewalk as a licensee and out of state visitor and therefore, the Defendant owed Plaintiff Priscilla Peterkin the

duty to use reasonable care to discover her and avoid injury to her in carrying on activities upon the land, and to use reasonable care to warn her of any concealed dangerous conditions or activities which are known to the Defendant; or of any change in the condition of the land or activities which are known to the Defendant; or of any change in the condition of the premises which may be dangerous to her, and which she may reasonably be expected to discover.

20. The Defendant(s) owed Plaintiff Priscilla Peterkin the duty to use reasonable care to warn her of the “raised concrete” condition in the sidewalk as it were a concealed dangerous condition of the premises that the Defendant(s) knew or should have known about and that a licensee, like the Plaintiff, may reasonably be expected to discover.

21. Plaintiff Priscilla Peterkin would show that the Defendant(s), by and through their agents, servants and employees, negligently, recklessly, willfully, wantonly, intentionally and grossly negligently breached its duty to Plaintiff Priscilla Peterkin in the following particulars:

- (a) In failing to use reasonable care to discover Plaintiff and avoid injury to her in carrying on activities upon the land;
- (b) In failing to use reasonable care to warn Plaintiff of any concealed dangerous conditions or activities which are known to the Defendant, or of any change in the condition of the premises which may be dangerous to Plaintiff, and which she may reasonably be expected to discover;
- (c) In failing to properly train and supervise staff;
- (d) In creating an unreasonably dangerous condition on the premises;
- (e) By hiring negligent, unqualified, and unsupervised staff;

- (f) In failing to use reasonable care to warn of the foreign and hazardous object despite actual notice thereof;
- (g) In failing to use reasonable care to warn of the foreign and hazardous object despite constructive notice thereof, in that the foreign object existed on the ground for a sufficient period of time to be discovered in the exercise of ordinary care; and
- (h) In such other and further particulars as the evidence at trial might show; Any one or more of which acts and/or omission were a proximate cause of the injuries suffered by the Plaintiff. Said acts and/or omission were in violation of the statutory and case law of the State of South Carolina.

22. As a direct and proximate result of the Defendant's negligent, reckless, willful, wanton, and grossly negligent acts and/or omissions as enumerated herein and above, Plaintiff Priscilla Peterkin was seriously injured due to her fall on Defendant's property. Plaintiff Priscilla Peterkin was seriously injured due to her fall on Defendant's property. Plaintiff Priscilla Peterkin would show that she has incurred severe physical harm which has caused, and will cause, her to undergo pain and suffering, impairment of health, and loss of enjoyment of life. Plaintiff Priscilla Peterkin has suffered severe emotional distress, worry, mental anguish and embarrassment as a result of her fall and her injuries. Plaintiff Priscilla Peterkin has also incurred financial loss as a result of related medical expenses for hospital bills, doctor bills, and medication expenses. Plaintiff will also incur future medical expenses.

23. Plaintiff Priscilla Peterkin is entitled to judgment against the Defendant in an amount of money adequate to compensate her for her actual damages as a jury may

deem appropriate, for the costs of this action, pre-judgement interest, and for such other and further relief as this Court may deem just and proper.

**FOR A SECOND CAUSE OF ACTION  
(Negligence)**

24. Plaintiff re-alleges and incorporates the foregoing allegations of the preceding paragraphs as if repeated verbatim herein.

25. That Defendant(s) were responsible for the creation and remedy of the hazardous and dangerous condition to the sidewalk located in front of the business entrance.

26. That the Defendant(s), its agents, employees and servants, were negligent, negligent per se, grossly negligent, careless, reckless, willful and wanton, in one or more of the following particulars:

(a) In creating an unsafe walking area and allowing the concealed danger to remain without warning, when it knew or should have known of its hazardous presence;

(b) In failing and omitting to use reasonable care to warn of the hazardous concealed condition;

(c) In failing and omitting to warn Plaintiff Priscilla Peterkin and any other licensees of the hazards on or in the sidewalk by signs, personnel, barricades, or other means of the unsafe and highly dangerous area;

(d) In failing and omitting to exercise reasonable care at the location at issue so as to safeguard licensees and specifically Plaintiff Priscilla Peterkin from injury;

(e) In acting with a reckless and/or wanton disregard of the rights and safety of Plaintiff Priscilla Peterkin and any other licensees under the circumstances prevailing at the time of the accident;

(f) In failing to properly warn of the raised sidewalk when it knew or should have known of its existence;

(g) In failing and omitting to exercise reasonable care to warn of the “raised concrete” in the sidewalk at the time of Plaintiff Priscilla Peterkin’s injury when the Defendant knew or should have known that the change in elevation causing the sidewalk to be raised created a concealed dangerous condition;

(h) In failing to exercise that degree of care and caution which a reasonable and prudent person would have under the same or similar circumstances; and

(i) In such other and further particulars as the evidence at trial might show; Any one or more of which acts and/or omission were a proximate cause of the injuries suffered by the Plaintiff. Said acts and/or omissions were in violation of the statutory and case law of the State of South Carolina.

27. As a direct and proximate result of the negligence, negligence per se, gross negligence, carelessness, recklessness, willfulness and wantonness, of the Defendant and its employees and agents, the Plaintiff Priscilla Peterkin has suffered in the past, and will, upon information and belief, continue to suffer physical harm and injuries as a result of the aforesaid injury; has incurred and will continue to suffer physical and mental pain and suffering; has lost and will continue to lose the enjoyment of life; has incurred, and may incur in the future, medical expenses for doctors and other medical treatment; and has otherwise been permanently damaged and injured.

**FOR A THIRD CAUSE OF ACTION**

(Tort Liability of the Municipality)

28. Plaintiff re-alleges and incorporates the foregoing allegations of the preceding paragraphs as if repeated verbatim herein.

29. The South Carolina Tort Claims Act allows a cause of action against governmental entities in Tort in the same manner and to the same extent as a private individual under like circumstances.

30. The Defendant City of Myrtle Beach is a governmental entity and may be sued for its' negligence or the negligence of its employees or agents under the South Carolina Tort Claims Act.

31. Upon information and belief, Defendant City of Myrtle Beach knows or has reason to know that out of state visitors like the Plaintiff frequent its' beaches, walking paths, and sidewalks including the sidewalk where the Plaintiff fell.

32. That the injury to the Plaintiff was the direct and proximate result of the failure of Defendant City of Myrtle Beach to maintain the sidewalk or use reasonable care to warn the Plaintiff of the concealed dangerous condition of the sidewalk.

33. That the Defendant City of Myrtle Beach knew or should have known that the Plaintiff could discover the raised concrete and suffer a fall.

34. That by reason of the acts or omissions of Defendant City of Myrtle Beach as set forth above the Plaintiff is informed and believes that the Plaintiff is entitled to an award of actual damages in an amount to be determined by a jury, and for the costs of this action.

**WHEREFORE**, the Plaintiff prays as follows:

- a) For judgment against the Defendant(s), and an award of actual and punitive damages as determined by the jury;
- b) For the costs and disbursements, including pre-judgment interests, in the pursuit of this matter; and
- c) For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

The Deyaska Spencer Law Firm

By:

*s/Deyaska Spencer*

Deyaska Spencer, Esq.

S.C. State Bar No. 102107

The Deyaska Spencer Law Firm, LLC

1556 Sunnyside Drive (29204)

P.O. Box 6763

Columbia, SC 29260

Phone: (803) 873-0837

Fax no: (855) 416-6758

Email: [spencer@deyaskalaw.com](mailto:spencer@deyaskalaw.com)

Attorney for Plaintiff:

September 29, 2020

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Priscilla Peterkin,

Plaintiff,

v.

Bummz Beach, LLC, City of Myrtle Beach, and Bummz on the Beach, Inc., Individually and d/b/a Bummz on the Beach Café,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-26-04430

**ANSWER OF DEFENDANT BUMMZ ON THE BEACH, INC., INDIVIDUALLY AND D/B/A BUMMZ ON THE BEACH CAFÉ**

**(JURY TRIAL DEMANDED)**

Defendant Bummz on the Beach, Inc., individually and d/b/a Bummz on the Beach Café (“Bummz on the Beach”), hereby answers the Amended Complaint of Plaintiff Priscilla Peterkin (“Plaintiff”) as follows. Each and every allegation not admitted, explained, or qualified is denied:

**FOR A FIRST DEFENSE**

1. Defendant Bummz on the Beach lacks knowledge or information sufficient to fully form a belief as to the allegations of Paragraphs 1 and 2, denies the same, and demands strict proof thereof.

2. Defendant Bummz on the Beach admits only so much of the allegations contained in Paragraph 3 as could be construed to allege that it is an incorporated entity organized and existing under the laws of the State of South Carolina and conducts business therein and denies any allegations inconsistent therewith.

3. Defendant Bummz on the Beach lacks knowledge or information sufficient to fully form a belief as to the allegations of Paragraph 4 of the Amended Complaint.

4. The allegations contained in Paragraph 5 are legal conclusions to which no response is required; to the extent a response is required, the allegations are denied.

5. Defendant Bummz on the Beach lacks knowledge or information sufficient to fully form a belief as to the allegations of Paragraph 6, denies the same, and demands strict proof thereof.

6. The allegations contained in Paragraphs 7 and 8 are legal conclusions to which no response is required; to the extent a response is required, the allegations are denied.

7. In response to Paragraph 9, Defendant Bummz on the Beach repeats and reincorporates all prior responses herein as if repeated verbatim.

8. Defendant Bummz on the Beach denies the allegations contains in Paragraphs 10, 11, 12, 13, 14, 15, and 16.

9. In response to Paragraph 17, Defendant Bummz on the Beach repeats and reincorporates all prior responses herein as if repeated verbatim.

10. Defendant Bummz on the Beach denies the allegations contains in Paragraphs 18, 19, 20, 21, 22, and 23.

11. In response to Paragraph 24, Defendant Bummz on the Beach repeats and reincorporates all prior responses herein as if repeated verbatim.

12. Defendant Bummz on the Beach denies the allegations contains in Paragraphs 25, 26, and 27.

13. In response to Paragraph 28, Defendant Bummz on the Beach repeats and reincorporates all prior responses herein as if repeated verbatim.

14. The allegations contained in Paragraphs 29, 30, 31, 32, 33, and 34 are not directed at Defendant Bummz on the Beach and therefore no response is required; to the extent a response is required, the allegations and denied.

15. Defendant Bummz on the Beach denies the relief sought in the Wherefore clause and seeks a jury trial on this matter.

**FOR A SECOND DEFENSE**

16. Plaintiff's Amended Complaint fails to state a claim for which relief can be granted.

**FOR A THIRD DEFENSE**

17. Plaintiff's damages, if any, are the sole and proximate result of the actions or omissions of another person or entity.

**FOR A FOURTH DEFENSE**

18. Plaintiff has failed to mitigate her damages, if any.

**FOR A FIFTH DEFENSE**

19. Plaintiff's damages, if any, were caused by an intervening and/or superseding cause.

**FOR A SIXTH DEFENSE**

20. Plaintiff's damages, if any, were caused by an open and obvious condition.

**FOR A SEVENTH DEFENSE**

21. Plaintiff is barred from recovery by the doctrine of comparative negligence in that Plaintiff's negligence in causing the claimed damages, if any, was greater than fifty percent (50%). In the alternative Plaintiff's recovery, if any, should be reduced by virtue of Plaintiff's own negligence.

**FOR AN EIGHTH DEFENSE**

22. If Plaintiff sustained damages in the manner alleged in the Amended Complaint, then the alleged damages were sustained not as the result of any fault, neglect, breach of warranty (express or implied) or want of due care on the part of Defendant Bummz on the Beach or of anyone for whose conduct Defendant Bummz on the Beach is in any way responsible, but solely through the fault, neglect, breach of warranty (express or implied) and want of due care on the

part of Plaintiff and/or other parties to this action, all of which will be shown at the trial of this case, and for which Plaintiff can have no recovery against Defendant Bummz on the Beach or, in the alternative, for which Plaintiff's recovery should be appropriately reduced.

**FOR A NINTH DEFENSE**

23. Plaintiff's claims are barred by the applicable statute of limitations and/or the equitable doctrine of laches.

**FOR A TENTH DEFENSE**

24. Plaintiff's Amended Complaint must be dismissed on the grounds that Defendant Bummz on the Beach had no control or ownership over the area in which Plaintiff alleges to have fallen.

**FOR AN ELEVENTH DEFENSE**

25. Punitive damages are unconstitutional under the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution and similar provisions of the South Carolina Constitution.

**FOR A TWELFTH DEFENSE**

26. Defendant Bummz on the Beach reserves the right and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

**FOR A THIRTEENTH DEFENSE**

27. Defendant Bummz on the Beach would show that any award of punitive damages is subject to the limitations set forth in S.C. Code Ann. § 15-32-530, *et. seq.*

**FOR A FOURTEENTH DEFENSE**

28. Defendant Bummz on the Beach reserves the right and does not waive any additional or further defenses as may be revealed by additional information that may be required in discovery or otherwise.

Wherefore, having fully answered the Amended Complaint of the Plaintiff, Defendant Bummz on the Beach prays the same be dismissed with costs and for such other and further relief as may be deemed just and proper.

**HAYNSWORTH SINKLER BOYD, P.A.**

s/ Roopal S. Ruparelia  
Roopal S. Ruparelia (SC Bar No. 16003)  
Joseph D. Spate (SC Bar No. 103734)  
1201 Main Street, 22<sup>nd</sup> Floor  
Post Office Box 11889 (29211-1889)  
Columbia, South Carolina 29201  
(803) 779.3080 - telephone  
(803) 765.1243 - fax  
rruparelia@hsblawfirm.com  
jspate@hsblawfirm.com

November 4, 2020  
Columbia, South Carolina

*Attorneys for Defendant Bummz on the Beach,  
Inc., individually and d/b/a Bummz on the  
Beach Café*

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Priscilla Peterkin,

Plaintiff,

v.

Bummz Beach, LLC, City of Myrtle Beach, and Bummz on the Beach, Inc., Individually and d/b/a Bummz on the Beach Café,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-26-04430

**BUMMZ ON THE BEACH, INC.,  
INDIVIDUALLY AND D/B/A BUMMZ ON  
THE BEACH CAFÉ'S  
MOTION FOR SUMMARY JUDGMENT**

**TO: PLAINTIFF ABOVE-NAMED, AND HER ATTORNEY, DEYASKA SPENCER, ESQUIRE**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for Defendant Bummz on the Beach, Inc., Individually and d/b/a Bummz on the Beach Café (“Defendant”), will move for an Order granting it summary judgment in this case, pursuant to Rule 56, SCRCP (“Motion”).

This Motion is based on the grounds that there is no genuine issue of material fact as to Defendant’s liability and it is entitled to judgment as a matter of law as to all allegations in Plaintiff Priscilla Peterkin’s (“Plaintiff”) Complaint. This Motion is further based on the grounds that:

1. In Plaintiff’s deposition, despite being asked repeatedly, she was unable to articulate what caused her to fall on November 24, 2018, while traversing a sidewalk in Myrtle Beach. As the Plaintiff: “To recover damages for injuries caused by a dangerous or defective condition on a storekeeper’s premises, the plaintiff must show either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it.” *Garvin*

*v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001). Yet, Plaintiff cannot point to a “specific act” or “dangerous condition” because she knows not what caused her to fall nor can she show Defendant had “actual or constructive knowledge” because again, she cannot articulate what may or may not have caused her to fall. *Id.*

2. Defendant does not maintain the sidewalk where the subject incident took place. In fact, the City of Myrtle Beach admits “that it maintains the sidewalks that are within the right-of-way of North Ocean Boulevard” and Plaintiff readily admits she fell on the sidewalk. Amended Complaint ¶ 14; see City of Myrtle Beach’s Supplemental Responses to Defendant’s Requests for Admission which are attached hereto and incorporated herein by reference as **Exhibit A**. Therefore, even if Plaintiff were able to point to a “specific act” or “dangerous condition” such was being maintained by the City of Myrtle Beach rather than Defendant. *Garvin*, 343 S.C. at 628, 541 S.E.2d at 832.

This Motion is further supported by the pleadings, the answers to interrogatories, responses to requests for production, the depositions taken as well as any affidavits and memoranda of law presented at or prior to the hearing.

Pursuant to Rule 11, SCRPC, the undersigned counsel certifies that no consultation with opposing counsel is required.

**HAYNSWORTH SINKLER BOYD, P.A.**

*/s/ Charles E. Ipock*

---

Roopal S. Ruparelia (SC Bar No. 16003)  
1201 Main Street, 22<sup>nd</sup> Floor  
Post Office Box 11889 (29211-1889)  
Columbia, South Carolina 29201  
(803) 779.3080 - telephone  
(803) 765.1243 - fax  
rruparelia@hsblawfirm.com

Charles Epps Ipock (SC Bar No. 101258)  
135 S. Dargan Street, Suite 300  
Florence, South Carolina 29506  
(843) 669.6002 - telephone  
(843) 669.3815 - fax  
cipock@hsblawfirm.com

March 23, 2021  
Columbia, South Carolina

*Attorneys for Defendant Bummz on the Beach  
Inc. d/b/a Bummz on the Beach Café*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CIVIL CASE NO. 2020-CP-26-04430
	)	
Priscilla Peterkin,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>CITY OF MYRTLE BEACH'S</b>
	)	<b><u>SUPPLEMENTAL ANSWERS</u></b>
	)	<b>TO BUMMZ DEFENDANTS'</b>
	)	<b>FIRST REQUEST FOR ADMISSION</b>
Bummz Beach, LLC,	)	
City of Myrtle Beach, and	)	
Bummz on the Beach, Inc., individually	)	
and d/b/a Bummz on the Beach Café,	)	
	)	
Defendants.	)	
	)	

Defendant, City of Myrtle Beach, through their undersigned counsel, and pursuant to Rule 34 of the *South Carolina Rules of Civil Procedure*, supplements its answers to Bummz on the Beach, Inc., Individually and D/B/A Bummz on the Beach Café's First Request for Admission as follows:

**SUPPLEMENTAL ANSWERS TO FIRST REQUEST FOR ADMISSION**

1. Admit that the City has sole custody, possession, and control of the sidewalk in front of and adjacent to Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.

**ANSWER: Denied. A portion of the sidewalk is located on Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.**

2. Admit that Bummz has no possessory interest in the sidewalk in front of or adjacent to Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.

**ANSWER: Denied. A portion of the sidewalk is located on Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.**

3. Admit that Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441 does not contain any of the sidewalk in front of or adjacent to the parcel.

**ANSWER: Denied. A portion of the sidewalk is located on Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.**

4. Admit that the Lease Agreement by and between Bummz and J. Bobby Anderson (“Agreement”), attached hereto and incorporated herein as **Exhibit A**, contains no lease of the sidewalk in front of or adjacent to Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.

**ANSWER: Denied. A portion of the sidewalk is located on Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.**

5. Admit that the city has superior knowledge of conditions within its control more so than Bummz.

**ANSWER: This Defendant is unable to admit or deny this request in that the sidewalk is open to the public; presumably Bummz has knowledge of the condition of the sidewalk adjacent to its property and this defendant has insufficient information to determine who has superior knowledge.**

6. Admit that the City maintains the sidewalk in front of and adjacent to Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.

**ANSWER: Admitted as qualified. This Defendant admits that it maintains the sidewalks that are within the right-of-way of North Ocean Boulevard.**

**RICHARDSON, PLOWDEN & ROBINSON, P.A.**

*s/ Douglas C. Baxter*

---

Douglas C. Baxter, Esquire, SC Bar No. 6272  
Shauna L. Gibson, Esquire, SC Bar No. 104016  
2103 Farlow Street, Myrtle Beach, SC 29577  
Post Office Box 3646, Myrtle Beach, SC 29578  
(843) 448-1008 Main; (843) 448-1533 Fax  
(843) 443-3580 DCB-Direct; (843) 443-3583 SLG-Direct  
[dbaxter@richardsonplowden.com](mailto:dbaxter@richardsonplowden.com)  
[sgibson@richardsonplowden.com](mailto:sgibson@richardsonplowden.com)

*Attorneys for City of Myrtle Beach*

March 9, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CIVIL CASE NO. 2020-CP-26-04430
	)	
Priscilla Peterkin,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
Bummz Beach, LLC,	)	
City of Myrtle Beach, and	)	
Bummz on the Beach, Inc., individually	)	
and d/b/a Bummz on the Beach Café,	)	
	)	
Defendants.	)	
	)	

I, an employee of Richardson, Plowden & Robinson, P.A., certify that I served the foregoing **City of Myrtle Beach’s Supplemental Answers to Bummz Defendants’ First Request for Admission** to counsel of record as follows:

**Via Email ONLY**

Deyaska Spencer, Esquire  
The Deyaska Spencer Law Firm  
1556 Sunnyside Drive (29204)  
Post Office Box 6763  
Columbia, SC 29260  
[spencer@deyaskalaw.com](mailto:spencer@deyaskalaw.com)  
*Attorney for Plaintiff*

**Via Email ONLY**

Roopal S. Ruparelia, Esquire  
Joseph D. Spate, Esquire  
Haynsworth, Sinkler, Boyd, P.A.  
1201 Main Street, 22nd Floor  
Post Office Box 11889  
Columbia, SC 29201  
*Attorney for Defendant, Bummz on the Beach, Inc., individually and d/b/a Bummz on the Beach Cafe*

*s/ Gail Hasty-Bradon*

\_\_\_\_\_  
Gail Hasty-Bradon, Legal Assistant

March 9, 2021

**SOUTH CAROLINA  
COUNTY OF HORRY**

**IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2020-CP-26-04430**

Priscilla Peterkin,  
Plaintiff,

-v-

Bummz Beach, LLC, City of Myrtle  
Beach, and Bummz on the Beach, Inc.,  
individually and d/b/a Bummz on the  
Beach Café,

Defendant(s).

**MEMO IN OPPOSITION TO  
DEFENDANT BUMMZ ON THE  
BEACH, INC., INDIVIDUALLY AND  
D/B/A BUMMZ ON THE BEACH  
CAFÉ'S MOTION FOR SUMMARY  
JUDGMENT**

**TO: THE HONORABLE STEVEN H. JOHN, DEFENDANT BUMMZ ON THE BEACH, INC., INDIVIDUALLY AND D/B/A/ BUMMZ ON THE BEACH CAFÉ AND THEIR ATTORNEY**

This memo is in opposition to Defendant Bummz on the Beach, Inc., Individually and D/B/A Bummz on the Beach Café's ("Defendant Bummz") Motion for Summary Judgment. We ask that the Court deny the Defendant's motion because Defendant Bummz' failure to maintain the palm tree bush on their property which overhung the sidewalk contributed to Ms. Peterkin's fall.

**EXHIBITS**

The following exhibits are submitted to Court to support Plaintiff's opposition to Defendant Bummz's motion:

1. Exhibit 1 - Affidavit of Antisha Peterkin
2. Exhibit 2 - Amended Summons and Complaint

3. Exhibit 3 - Answer of City of Myrtle Beach
4. Exhibit 4 - Answer of Defendant Bummz on the Beach, Inc.
5. Exhibit 5 - Affidavit of Calian Tate
6. Exhibit 6 - City of Myrtle Beach's Responses to Defendant Bummz's Requests to Admit
7. Exhibit 7 - City of Myrtle Beach's Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents
8. Exhibit 8 - Defendant Bummz on the Beach, Inc's response to Plaintiff's First Set of Interrogatories and Requests for Production of Documents
9. Exhibit 9 - Affidavit of Priscilla Peterkin
10. Exhibit 10 - Plaintiff's Responses to Defendant Bummz on the Beach, Inc's First Set of Interrogatories and Requests for Production
11. Exhibit 11 - Plaintiff's Responses to Defendant City of Myrtle Beach's First Set of Interrogatories and Requests for Production
12. Exhibit 12 - Plaintiff's Supplemental Interrogatories to Defendant City of Myrtle Beach and Defendant Bummz on the Beach, Inc.
13. Exhibit 13 - Exhibit 1 from Peterkin Deposition
14. Exhibit 14 - Exhibit 2 from Peterkin Deposition
15. Exhibit 15 - Exhibit 3 from Peterkin Deposition
16. Exhibit 16 - Exhibit 4 from Peterkin Deposition
17. Exhibit 17 - Exhibit 5 from Peterkin Deposition
18. Exhibit 18 - Priscilla Peterkin Deposition Transcript
19. Exhibit 19 - Exhibit 1 from Rippy Deposition

- 20. Exhibit 20 - Exhibit 3 from Rippy Deposition
- 21. Exhibit 21 - Exhibit 4 from Rippy Deposition
- 22. Exhibit 22 - Exhibit 5 from Rippy Deposition
- 23. Exhibit 23 - William D. Rippy Deposition

### **BACKGROUND**

The Plaintiff, Ms. Peterkin, is an out-of-state resident who traveled to Myrtle Beach, South Carolina for the Thanksgiving holiday in November 2018. The night before they planned to leave, Ms. Peterkin, her family members and friend decided to take a late-night walk from their hotel down to the Ferris wheel. When they left their hotel, they crossed over to the side of the street which is opposite from their hotel; and they made it to the Ferris wheel without incident. On their way back from the Ferris wheel, Ms. Peterkin, her family and friend were walking on side of the street where both Bummz on the Beach Café and their hotel were located. Shortly before they arrived back to their hotel, Ms. Peterkin tripped and fell as a result of a crack in the concrete sidewalk which was not easily discoverable given a palm tree bush which overhung the crack. The crack is in front of Defendant Bummz's business. On Defendant Bummz's property there are palm tree bushes which overhang over the sidewalk. As a result of both the crack and the palm tree bush which overhung it, Ms. Peterkin tripped and fell thereby suffering injuries.

### **LAW AND ANALYSIS**

SCRCP 56(c) states that summary judgment is appropriate when, "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Here, the Defendant argues this motion on the basis that the Plaintiff was

“unable to articulate what caused her to fall on November 24, 2018” and that they do not maintain the sidewalk where the incident occurred.

Here, the Plaintiff states in her Deposition that she was “heading back to the hotel” (Priscilla Peterkin Deposition page 14, line 11) when she fell. She further testifies, “so we were walking back from my little walk, and right after I passed the entranceway of Bummz Beach where you can go into the door, a few steps up, I just feel my right foot tip forward. So, I thought maybe I could break myself from the fall, if I put my hand down, but it was just --- it happened so fast, you know, I fell so fast.” (Priscilla Peterkin Depo. page 15, lines 9-15). In her Affidavit she further states, “most of my family members were behind me when I tripped and fell and they witnessed my fall.” (Peterkin Affidavit paragraph 11). Two witnesses, Antisha Peterkin and Calian Tate identified the crack where the palm tree overhangs it as the place where they saw Ms. Peterkin trip and fall. Both witness Affidavits are attached hereto. Antisha states in her Affidavit, “my mom tripped and fell on a crack in the sidewalk which is represented in Plaintiff’s exhibits 4, 5 and 6.” (Antisha Peterkin Affidavit paragraph 6). Calian Tate, also witnessed the fall and stated that Ms. Peterkin, “tripped and fell on a crack in the sidewalk in front of Bummz.” (Calian Tate Affidavit paragraph 4).

Ms. Peterkin further explains in her deposition that it was dark outside and she was on the right side of the sidewalk closest to Defendant Bummz and the palm tree bush when she fell. The owner of Defendant Bummz, William D. Rippy provided testimony in reference to the maintenance of the palm tree bushes. In Defendant William Rippy’s deposition when questioned about the palm tree bush overhanging the sidewalk he says, “it overhangs, yeah.” (William D. Rippy, Deposition page 22, line 10).

He again, earlier in his testimony confirms that “it hangs into the sidewalk.” (William D. Rippy Deposition page 22, line 6). When asked who maintains the palm tree bushes, he says, “we do.” (William D. Rippy Deposition pg. 22, line 18).

In light of the above, there is a genuine issue of material fact that only the trier of fact can resolve. But for Defendant Bummz’s failure to properly maintain the palm tree bushes, together with the crack in the sidewalk, Ms. Peterkin may have never suffered a fall which resulted in injuries to her person. Therefore, we ask that the Court deny Defendant Bummz’s motion for summary judgment.

The Deyaska Spencer Law Firm, LLC

*s/Deyaska Spencer*

Deyaska Spencer (SC Bar No.: 102107)

spencer@deyaskalaw.com

The Deyaska Spencer Law Firm

1556 Sunnyside Drive

P.O. Box 6763 (29260)

Columbia, SC 29204

Off: (803) 764-3639

Fax: (855) 416-6758

Attorney for Plaintiff

**SOUTH CAROLINA**  
**COUNTY OF HORRY**

**IN THE COURT OF COMMON PLEAS**  
**CIVIL ACTION NO. 2020-CP-26-04430**

Priscilla Peterkin,  
Plaintiff,  
  
-V-  
  
Bummz Beach, LLC, City of Myrtle  
Beach, and Bummz on the Beach, Inc.,  
individually and d/b/a Bummz on the  
Beach Café,  
Defendant(s).

**AFFIDAVIT OF ANTISHA PETERKIN**

Personally, appeared before me the Affiant, Antisha Peterkin, who after being duly sworn deposes and says:

1. My name is Antisha Peterkin and I am giving this Affidavit freely and voluntarily with reference to a fall that occurred on or about November 24, 2018 in Myrtle Beach, South Carolina.
2. I am the daughter of Priscilla Peterkin and I am the Legal Control Officer at Wells Fargo Bank.
3. My family and I went to Myrtle Beach to celebrate Thanksgiving.
4. The night my mom fell my cousin Lisa, uncle Andre, sister Laswanda, Calian and I had gone for a walk down the strip using the sidewalk opposite the hotel.
5. While walking back to the hotel we were on the same side of the street as our hotel and my mom was walking no more than 5 feet in front of me.

6. My mom tripped and fell on a crack in the sidewalk which is represented in Plaintiff's exhibits 4,5 and 6.
7. Lisa took the photos of the place where my mom fell.
8. She tried to put her arm down to brace her fall and to keep from hitting her head, but still fell extremely hard to the ground.
9. When she fell, she curled up in pain and rolled from the initial place where she fell.
10. My mom wasn't distracted when she fell, she doesn't smoke, she doesn't drink; and we were just walking and enjoying ourselves when she tripped and fell on the crack.
11. I believe 911 was called on my sister's cell phone and I helped complete the initial officer's report.
12. My mom was in extreme pain and she was hurdled over following the fall.
13. I have seen my mom cry probably four times in whole my life, and that night is one of the four times I've seen her cry.
14. It was a very dark corner where my mom fell; if not for Lisa's camera flash the exhibit photos would have been much darker.
15. I went back to Myrtle Beach in September 2020 and saw the crack was still there.

A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS AFFIDAVIT MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL PENALTIES AS PROVIDED BY LAW.

SUBSCRIBED AND  
 Sworn to before me this 3<sup>RD</sup> day  
 of JUNE, 2021  
 \_\_\_\_\_  
 Notary Public for NC  
 My Commission Expires:  
SEPTEMBER 3, 2023

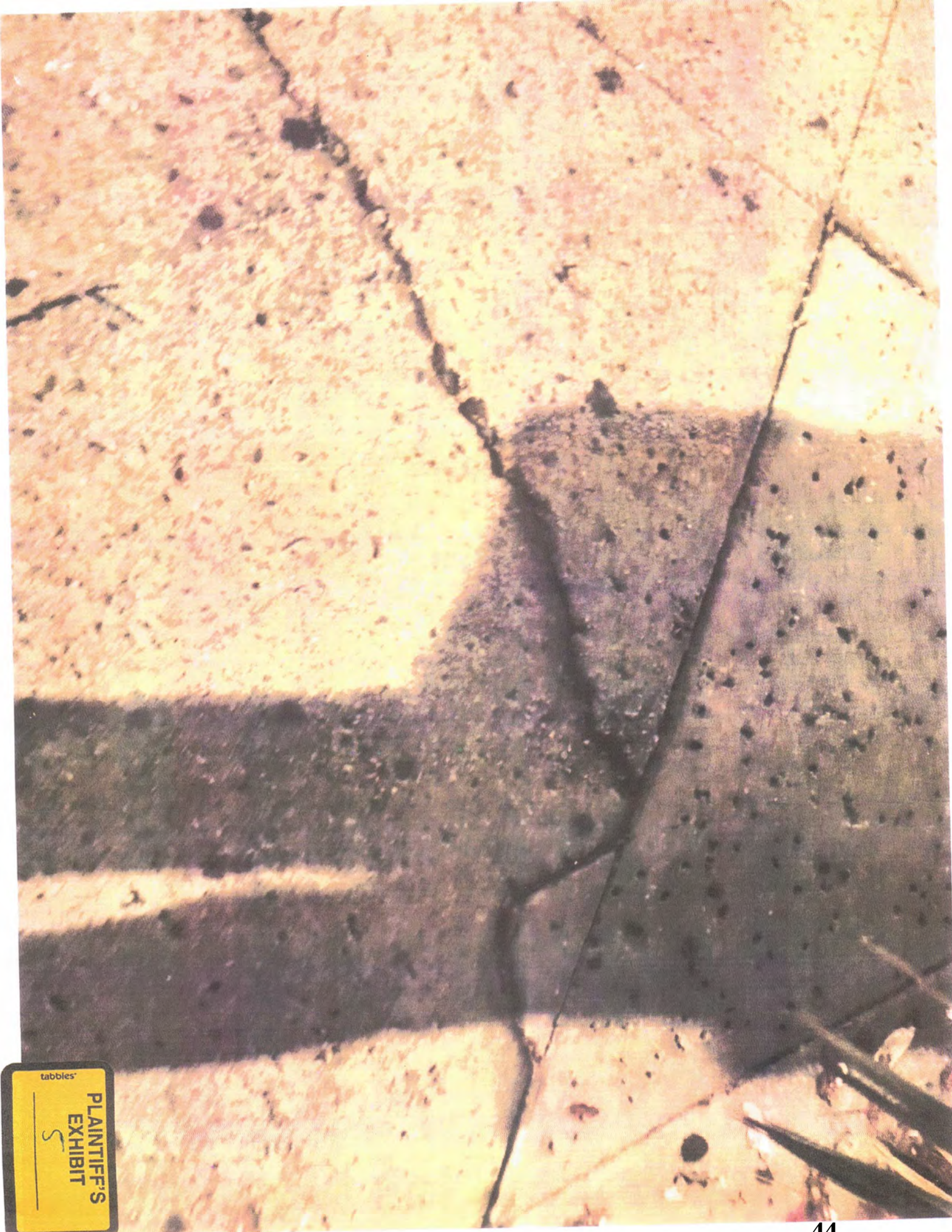
JONATHON PRATHER  
 NOTARY PUBLIC  
 Mecklenburg County  
 North Carolina  
 My Commission Expires Sep. 03, 2023

  
 \_\_\_\_\_  
 ANTISHA PETERKIN



015 0024

tabbies' **PLAINTIFF'S EXHIBIT**  
4



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PLAINTIFF'S  
EXHIBIT  
5



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PLAINTIFF'S  
EXHIBIT  
4

<b>SOUTH CAROLINA</b> <b>COUNTY OF HORRY</b>	<b>IN THE COURT OF COMMON PLEAS</b> <b>CIVIL ACTION NO. 2020-CP-26-04430</b>
-------------------------------------------------	---------------------------------------------------------------------------------

Priscilla Peterkin  
Plaintiff,  
  
-V-  
  
Bummz Beach, LLC, City of Myrtle Beach, and Bummz on the Beach, Inc., individually and d/b/a Bummz on the Beach Café,  
Defendant(s).

**AFFIDAVIT OF CALIAN TATE**

Personally appeared before me the Affiant, Calian Tate, who after being duly sworn deposes and says:

1. My name is Calian Tate and I am giving this Affidavit freely and voluntarily with reference to a fall that occurred on or about November 24, 2018 in Myrtle Beach, South Carolina.
2. We were walking back to the Breakers hotel when I saw Priscilla fall in front of Bummz restaurant.
3. I was about three or four steps behind Priscilla as we were walking back and was able to see her trip and fall.
4. She fell hard when she tripped on a crack in the sidewalk in front of Bummz.
5. The crack in the sidewalk was directly in front of the restaurant which is beside the hotel.

6. I saw several pictures that were taken that night showing where Priscilla fell prior to giving this Affidavit.

7. The pictures look like the same place where I saw Priscilla trip and fall that night.

8. The picture which says it is Plaintiff's Exhibit 4 is the exact place I remember Priscilla falling at that night.

9. I understand the picture I saw which says it is Plaintiff's Exhibit 4 is included with my Affidavit for reference purposes.

A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS AFFIDAVIT MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL PENALTIES AS PROVIDED BY LAW.

Sworn to before me this 3<sup>rd</sup> day  
of June, 2021

Debbie G Baker  
Notary Public for NC

My Commission Expires: 3/17/25

Calian Tate  
CALIAN TATE





SN 0024

tabbies®  
**PLAINTIFF'S  
EXHIBIT**  
4



STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF HORRY ) CIVIL CASE NO. 2020-CP-26-04430  
 )  
 Priscilla Peterkin, )  
 )  
 Plaintiff, )  
 )  
 vs. ) CITY OF MYRTLE BEACH'S ANSWERS  
 ) TO BUMMZ DEFENDANTS'  
 ) FIRST REQUEST FOR ADMISSION  
 )  
 Bummz Beach, LLC, )  
 City of Myrtle Beach, and )  
 Bummz on the Beach, Inc., individually )  
 and d/b/a Bummz on the Beach Café, )  
 )  
 Defendants. )  
 )

Defendant, City of Myrtle Beach, through their undersigned counsel, and pursuant to Rule 34 of the *South Carolina Rules of Civil Procedure*, answers Bummz on the Beach, Inc., Individually and D/B/A Bummz on the Beach Café's First Request for Admission as follows:

**ANSWERS TO FIRST REQUEST FOR ADMISSION**

1. Admit that the City has sole custody, possession, and control of the sidewalk in front of and adjacent to Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.

**ANSWER: This Defendant is currently unable to admit or deny this request as it is researching the information from Horry County GIS versus the recorded plat. This answer will be supplemented once that information is verified.**

2. Admit that Bummz has no possessory interest in the sidewalk in front of or adjacent to Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.

**ANSWER: This Defendant is currently unable to admit or deny this request as it is currently researching the information from Horry County versus the recorded plat. This answer will be supplemented once that information is verified.**

3. Admit that Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441 does not contain any of the sidewalk in front of or adjacent to the parcel.

**ANSWER: This Defendant is currently unable to admit or deny this request as it is currently researching the information from Horry County versus the recorded plat. This answer will be supplemented once that information is verified.**

4. Admit that the Lease Agreement by and between Bummz and J. Bobby Anderson ("Agreement"), attached hereto and incorporated herein as **Exhibit A**, contains no lease of the sidewalk in front of or adjacent to Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.

**ANSWER: This Defendant is currently unable to admit or deny this request as it is currently researching the information from Horry County versus the recorded plat. This answer will be supplemented once that information is verified.**

5. Admit that the city has superior knowledge of conditions within its control more so than Bummz.

**ANSWER: This Defendant is unable to admit or deny this request in that the sidewalk is open to the public; presumably Bummz has knowledge of the condition of the sidewalk adjacent to its property and this defendant has insufficient information to determine who has superior knowledge.**

6. Admit that the City maintains the sidewalk in front of and adjacent to Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.

**ANSWER: Admitted as qualified. This Defendant admits that it maintains the sidewalks that are within the right-of-way of North Ocean Boulevard.**

**RICHARDSON, PLOWDEN & ROBINSON, P.A.**

*s/ Douglas C. Baxter*

---

Douglas C. Baxter, Esquire, SC Bar No. 6272  
Shauna L. Gibson, Esquire, SC Bar No. 104016  
2103 Farlow Street, Myrtle Beach, SC 29577  
Post Office Box 3646, Myrtle Beach, SC 29578  
(843) 448-1008 Main; (843) 448-1533 Fax  
(843) 443-3580 DCB-Direct; (843) 443-3583 SLG-Direct  
[dbaxter@richardsonplowden.com](mailto:dbaxter@richardsonplowden.com)  
[sgibson@richardsonplowden.com](mailto:sgibson@richardsonplowden.com)

*Attorneys for City of Myrtle Beach*

February 18, 2021

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) CIVIL CASE NO. 2020-CP-26-04430

Priscilla Peterkin,

)

Plaintiff,

)

vs.

)

**CERTIFICATE OF SERVICE**

)

Bummz Beach, LLC,

)

City of Myrtle Beach, and

)

Bummz on the Beach, Inc., individually

)

and d/b/a Bummz on the Beach Café.

)

Defendants.

)

)

I, an employee of Richardson, Plowden & Robinson, P.A., certify that I served the foregoing **City of Myrtle Beach's Answers to Bummz Defendants' First Request for Admission** to counsel of record as follows:

**Via Email ONLY**

Deyaska Spencer, Esquire  
The Deyaska Spencer Law Firm  
1556 Sunnyside Drive (29204)  
Post Office Box 6763  
Columbia, SC 29260  
[spencer@deyaskalaw.com](mailto:spencer@deyaskalaw.com)  
*Attorney for Plaintiff*

**Via Email ONLY**

Roopal S. Ruparelia, Esquire  
Joseph D. Spate, Esquire  
Haynsworth, Sinkler, Boyd, P.A.  
1201 Main Street, 22nd Floor  
Post Office Box 11889  
Columbia, SC 29201  
*Attorney for Defendant, Bummz on the Beach, Inc., individually and d/b/a Bummz on the Beach Cafe*

*s/ Gail Hasty-Bradon*

\_\_\_\_\_  
Gail Hasty-Bradon, Legal Assistant

February 18, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CIVIL CASE NO. 2020-CP-26-04430
	)	
Priscilla Peterkin,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>CITY OF MYRTLE BEACH'S ANSWERS</b>
	)	<b>TO BUMMZ DEFENDANTS'</b>
Bummz Beach, LLC,	)	<b>FIRST REQUEST FOR ADMISSION</b>
City of Myrtle Beach, and	)	
Bummz on the Beach, Inc., individually	)	
and d/b/a Bummz on the Beach Café,	)	
	)	
Defendants.	)	
	)	

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**ANSWERS TO FIRST REQUEST FOR ADMISSION**

1. Admit that the City has sole custody, possession, and control of the sidewalk in front of and adjacent to Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.

**ANSWER:** This Defendant is currently unable to admit or deny this request as it is researching the information from Horry County GIS versus the recorded plat. This answer will be supplemented once that information is verified.

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3. Admit that Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441 does not contain any of the sidewalk in front of or adjacent to the parcel.

**ANSWER: This Defendant is currently unable to admit or deny this request as it is currently researching the information from Horry County versus the recorded plat. This answer will be supplemented once that information is verified.**

4. Admit that the Lease Agreement by and between Bummz and J. Bobby Anderson (“Agreement”), attached hereto and incorporated herein as **Exhibit A**, contains no lease of the sidewalk in front of or adjacent to Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.

**ANSWER: This Defendant is currently unable to admit or deny this request as it is currently researching the information from Horry County versus the recorded plat. This answer will be supplemented once that information is verified.**

5. Admit that the city has superior knowledge of conditions within its control more so than Bummz.

**ANSWER: This Defendant is unable to admit or deny this request in that the sidewalk is open to the public; presumably Bummz has knowledge of the condition of the sidewalk adjacent to its property and this defendant has insufficient information to determine who has superior knowledge.**

6. Admit that the City maintains the sidewalk in front of and adjacent to Horry County TMS No./Pin No. 181-04-19-010/424-15-02-0441.

**ANSWER: Admitted as qualified. This Defendant admits that it maintains the sidewalks that are within the right-of-way of North Ocean Boulevard.**

**RICHARDSON, PLOWDEN & ROBINSON, P.A.**

*s/ Douglas C. Baxter*

---

Douglas C. Baxter, Esquire, SC Bar No. 6272  
Shauna L. Gibson, Esquire, SC Bar No. 104016  
2103 Farlow Street, Myrtle Beach, SC 29577  
Post Office Box 3646, Myrtle Beach, SC 29578  
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(843) 443-3580 DCB-Direct; (843) 443-3583 SLG-Direct  
[dbaxter@richardsonplowden.com](mailto:dbaxter@richardsonplowden.com)  
[sgibson@richardsonplowden.com](mailto:sgibson@richardsonplowden.com)

*Attorneys for City of Myrtle Beach*

February 18, 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	CIVIL CASE NO. 2020-CP-26-04430
Priscilla Peterkin,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
Bummz Beach, LLC,	)	
City of Myrtle Beach, and	)	
Bummz on the Beach, Inc., individually	)	
and d/b/a Bummz on the Beach Café,	)	
	)	
Defendants.	)	
	)	

I, an employee of Richardson, Plowden & Robinson, P.A., certify that I served the foregoing **City of Myrtle Beach's Answers to Bummz Defendants' First Request for Admission** to counsel of record as follows:

**Via Email ONLY**  
 Deyaska Spencer, Esquire  
 The Deyaska Spencer Law Firm  
 1556 Sunnyside Drive (29204)  
 Post Office Box 6763  
 Columbia, SC 29260  
[spencer@deyaskalaw.com](mailto:spencer@deyaskalaw.com)  
*Attorney for Plaintiff*

**Via Email ONLY**  
 Roopal S. Ruparelia, Esquire  
 Joseph D. Spate, Esquire  
 Haynsworth, Sinkler, Boyd, P.A.  
 1201 Main Street, 22nd Floor  
 Post Office Box 11889  
 Columbia, SC 29201  
*Attorney for Defendant, Bummz on the Beach, Inc., individually and d/b/a Bummz on the Beach Cafe*

*s/ Gail Hasty-Bradon*  
 \_\_\_\_\_  
 Gail Hasty-Bradon, Legal Assistant

February 18, 2021

<b>SOUTH CAROLINA</b> <b>COUNTY OF HORRY</b>	<b>IN THE COURT OF COMMON PLEAS</b> <b>CIVIL ACTION NO. 2020-CP-26-04430</b>
-------------------------------------------------	---------------------------------------------------------------------------------

Priscilla Peterkin,  
Plaintiff,  
  
-v-  
  
Bummz Beach, LLC, City of Myrtle  
Beach, and Bummz on the Beach, Inc.,  
individually and d/b/a Bummz on the  
Beach Café,  
Defendant(s).

**AFFIDAVIT OF PRISCILLA PETERKIN**

Personally appeared before me the Affiant, Priscilla Peterkin, who after being duly sworn deposes and says:

1. My name is Priscilla Peterkin and I am giving this Affidavit freely and voluntarily with reference to a fall that occurred on or about November 24, 2018 in Myrtle Beach, South Carolina.
2. The fall happened directly in front of Bummz on the Beach Restaurant and Bar ("Bummz Restaurant").
3. My family and I were on a family trip to Myrtle Beach, South Carolina and were staying at The Breakers Resort ("Breakers").
4. The night before our scheduled departure my family, friends and I went for a walk between 11:00pm and midnight.

5. When we left Breakers to begin our walk, we crossed over to the side of the street opposite from Breakers and Bummz restaurant.
6. We then proceeded to walk toward the Ferris wheel.
7. On our way back to Breakers, we were walking on the side of the street where both Breakers and Bummz restaurant are located.
8. Bummz is a restaurant we had to pass on our right in order to get back to Breakers.
9. We were walking on the sidewalk toward Breakers and in front of Bummz when I tripped and fell on a piece of raised concrete directly in front of the restaurant.
10. Since it was both dark, and because a Bummz palm tree bush was hanging over the raised concrete I couldn't see the danger and I tripped.
11. Most of my family members were behind me when I tripped and fell and they witnessed my fall.
12. The fall caused me to suffer a collar bone injury, wrist injury and knee injury.
13. My trip abruptly ended and I had to be transported to Grand Strand Regional Medical Center via ambulance.
14. I spent several months recovering after the fall and still deal with ongoing pain and suffering.

A FALSE STATEMENT CONCERNING THE FACTS CONTAINED IN THIS AFFIDAVIT  
MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL  
PENALTIES AS PROVIDED BY LAW.

Sworn to before me this 3 day

of June 2021

Donna K. Hunt

Notary Public for NC

My Commission Expires: 05/19/2024

Priscilla Peterkin  
PRISCILLA PETERKIN



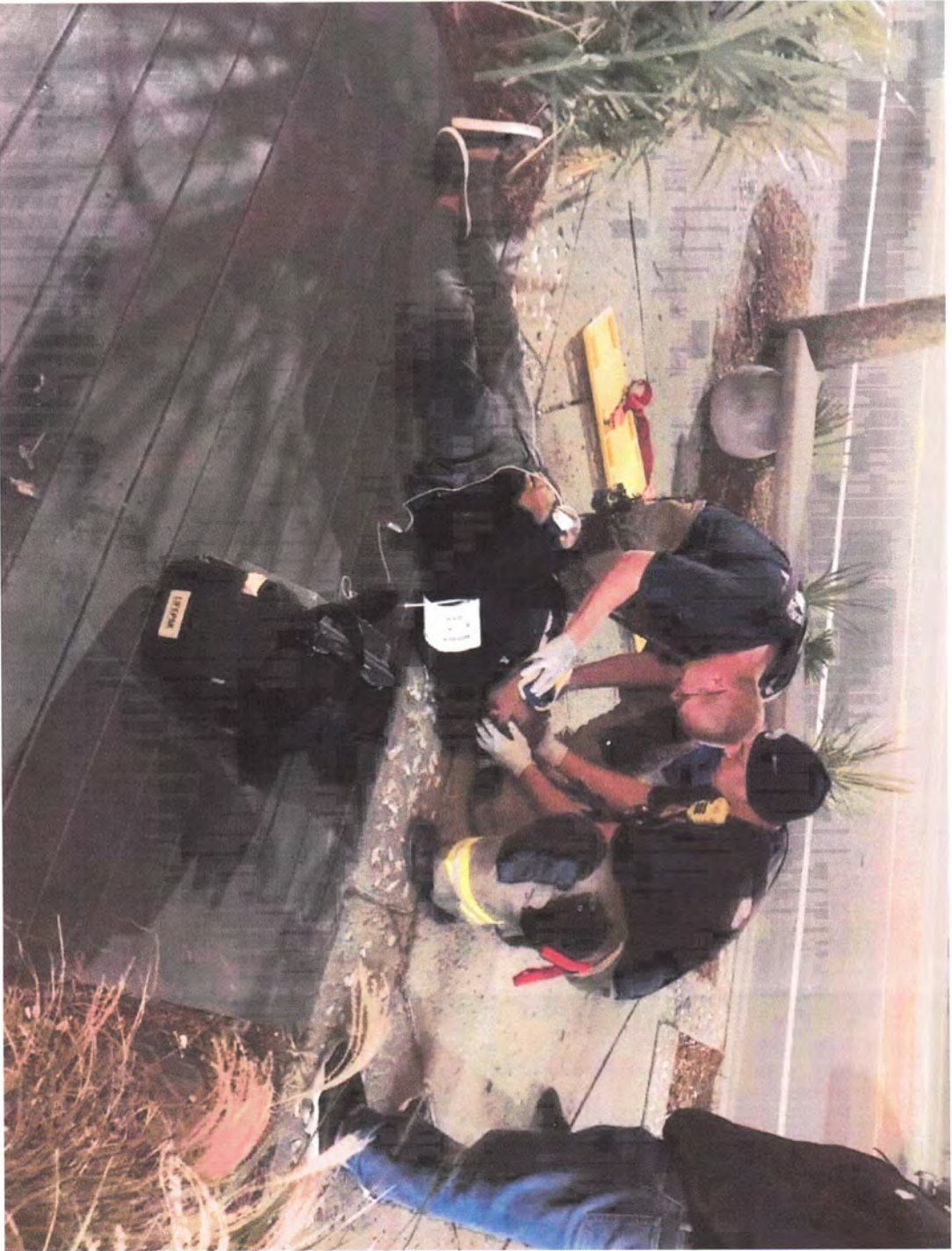
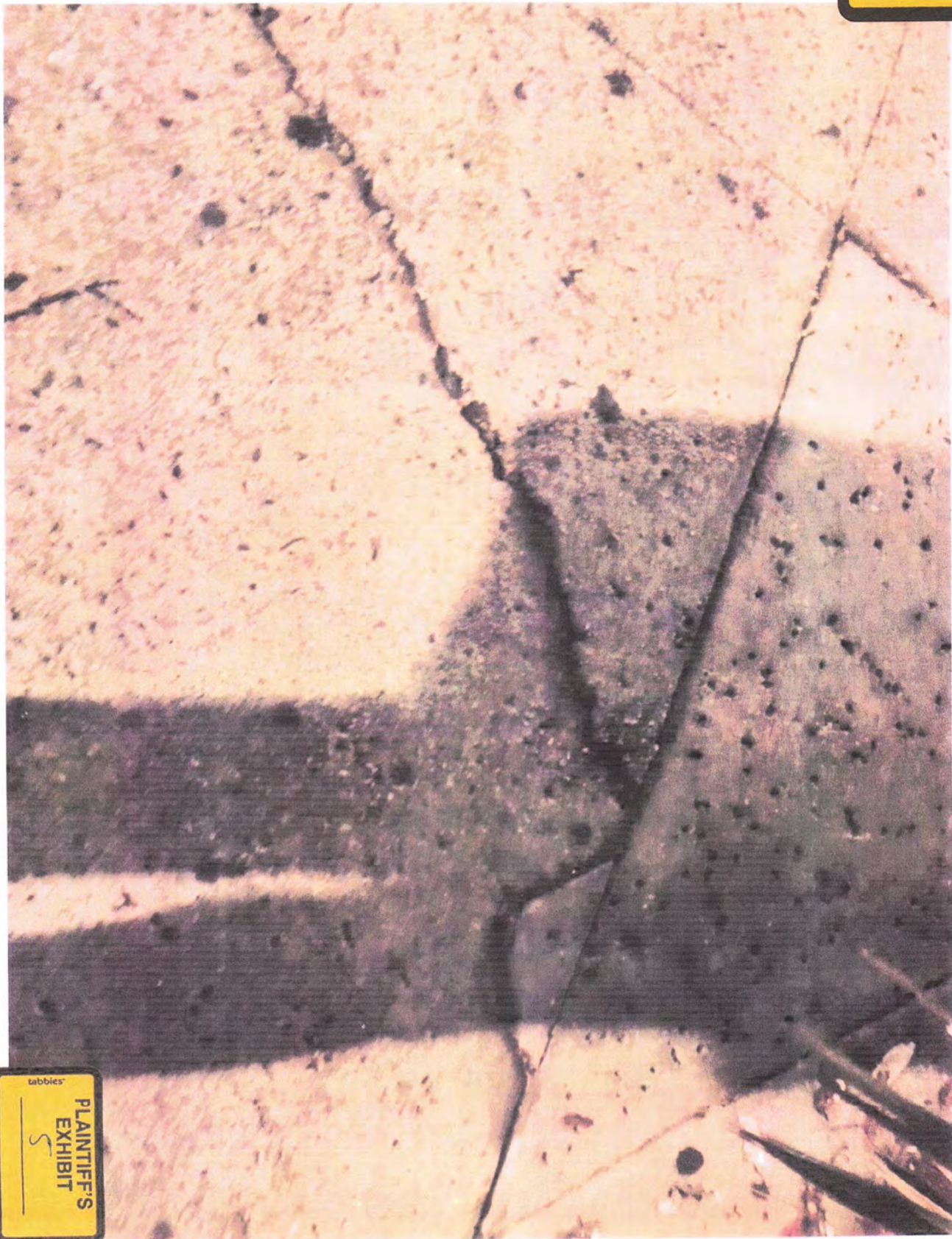


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5

**EXHIBIT**  
5



Deposition of:  
**Priscilla M. Peterkin**

*March 9, 2021*

In the Matter of:

**Peterkin, Priscilla Vs. Bummz Beach,  
LLC, Et Al**

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[www.veritext.com](http://www.veritext.com)

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF HORRY

3 PRISCILLA PETERKIN,  
4 Plaintiff,

5 vs.

CASE NO. 2020-CP-26-04430

6 BUMMZ BEACH, LLC, CITY OF  
7 MYRTLE BEACH, AND BUMMZ ON  
8 THE BEACH, INC., INDIVIDUALLY  
9 AND D/B/A BUMMZ ON THE BEACH  
10 CAFE,

Defendants.

VIDEOTELECONFERENCE

11 DEPOSITION OF: PRISCILLA PETERKIN

12 DATE: March 9, 2021

13 TIME: 11:03 a.m.

14 LOCATION: 148 Camelia Street  
Raeford, NC

15 TAKEN BY: Counsel for the Defendant  
16 BUMMZ BEACH, LLC, BUMMZ ON THE BEACH,  
17 INC., INDIVIDUALLY AND D/B/A BUMMZ  
ON THE BEACH CAFE

18 REPORTED BY: SOLANGE RUIZ-URIBE, Court Reporter  
Via VTC

19  
20  
21  
22  
23  
24  
25

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF  
3 PRISCILLA PETERKIN:

4 THE DEYASKA SPENCER LAW FIRM  
5 BY: DEYASKA SPENCER  
6 VIA VIDEOTELECONFERENCE  
7 1556 Sunnyside Drive  
8 Columbia, SC 29204  
9 (803) 764-3639  
10 spencer@deyaskalaw.com

11 ATTORNEYS FOR THE DEFENDANT  
12 BUMMZ BEACH, LLC, BUMMZ ON THE BEACH, INC.,  
13 INDIVIDUALLY AND D/B/A BUMMZ ON THE BEACH  
14 CAFE:

15 HAYNSWORTH SINKLER BOYD, P.A.  
16 BY: CHARLES E. IPOCK  
17 VIA VIDEOTELECONFERENCE  
18 135 S. Dargan Street, Suite 300  
19 Florence, SC 29506  
20 (843) 669-6002  
21 cipock@hsblawfirm.com

22 ATTORNEYS FOR THE DEFENDANT  
23 CITY OF MYRTLE BEACH:  
24 RICHARDSON PLOWDEN & ROBINSON, P.A.  
25 BY: DOUGLAS C. BAXTER  
VIA VIDEOTELECONFERENCE  
2103 Farlow Street, Suite B  
Myrtle Beach, SC 29577  
(843) 448-1008  
dbaxter@richardsonplowden.com

(INDEX AT REAR OF TRANSCRIPT)

1 PRISCILLA M. PETERKIN,  
2 after first being duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. IPOCK:

5 Q. Ms. Peterkin, good morning. My name is  
6 Charlie Ipock. We just met a moment ago off the  
7 record. It's good to see you this morning. I  
8 represent one of the defendants in this matter and  
9 I'll be taking your deposition.

10 A. Okay.

11 Q. Are you ready and able to move forward  
12 with the deposition this morning?

13 A. Yes.

14 Q. Fantastic. So just a couple of ground  
15 rules before we get started. First of all  
16 obviously, we're meeting over Zoom, which is a bit  
17 awkward. All you see is my head, which is strange,  
18 but the biggest hurdle today is helping Solange out.  
19 She's our court reporter and Zoom is really good on  
20 a lot of things, but it's not particularly good at  
21 allowing multiple people to talk at the same time.

22 A. Okay.

23 Q. I will do what I can to help you out and  
24 Solange will keep us straight to just try our best  
25 to allow one another to fully ask questions and

1 answer questions so we'll just work through that  
2 today.

3 A. Okay.

4 Q. Another big help for the court reporter is  
5 answering questions affirmatively through a verbal  
6 response, a yes or a no versus an uh-huh or huh-uh  
7 or head nod.

8 A. Yes.

9 Q. I'll, again, help you through that as we  
10 get on today. I don't think today is going to be  
11 terribly long. I'm not here to trick you or fool  
12 you. If you don't understand a question I've asked,  
13 well, that's my fault. You just ask me to rephrase  
14 and I'd be happy to do so, okay?

15 A. Yes.

16 Q. If you need a break at any time today  
17 that's absolutely fine. And again, I don't think  
18 we're going to go terribly long. And so you just  
19 ask, you know, we'll be happy to take a break. A  
20 lot of questions I'll ask today are not meant to  
21 offend, but simply dot my I's and cross my T's.

22 Sometimes we ask questions and people  
23 are like, why do you care about where my relative  
24 lives or things of that nature, but it's not to pry,  
25 it's simply to get some information that we need

1 to -- should this thing go to a trial or something  
2 of that sort, okay?

3 A. Yes.

4 Q. And one of the questions is -- people  
5 often are unsure about, again, we're just dotting  
6 our I's, crossing our T's. Are you under the  
7 influence of any drugs or alcohol or anything else  
8 that might impede your ability to give a deposition  
9 today?

10 A. No.

11 Q. Have you ever testified at a trial, so a  
12 judge, a jury in a courtroom, have you ever done  
13 that before?

14 A. Yes.

15 Q. All right. Tell me a little bit about  
16 that?

17 A. It was an incident in my neighborhood  
18 where some neighbors was fighting and stuff and I  
19 was a witness to it. So when they went to court I  
20 had to go in and give my testimony as to what I had  
21 seen.

22 Q. Okay. Any other circumstances?

23 A. No, that was the only one.

24 Q. Okay. Have you ever given a deposition  
25 before like this where we have a court reporter?

1 A. No.

2 Q. Okay. Have you ever been charged with a  
3 crime other than a speeding ticket and that sort of  
4 thing?

5 A. No.

6 Q. What is your current address?

7 A. 148 Camelia Street, Raeford, North  
8 Carolina 28376.

9 Q. Okay. And what's your date of birth?

10 A. June 26, 1966.

11 Q. All right. What do you do up in Raeford?

12 A. I'm a section leader for an industry  
13 called Burlington, North Carolina. We make fabric  
14 for government to make their uniforms and stuff.

15 Q. Awesome. How long you been working there?

16 A. It will be 29 years this coming August.

17 Q. Wow. Well, I lived -- I lived in  
18 Fayetteville for a while, so I know that neck of the  
19 woods pretty good.

20 A. Okay.

21 Q. Well, that's -- that's great. What's your  
22 current role with the company there?

23 A. I'm a section leader for them. I've been  
24 on that job for the last seven years.

25 Q. Okay. So tell a little bit of about that

1 a day in the life of Ms. Priscilla, what do you do  
2 when you go in there and all that good stuff?

3 A. When I go in I have to check the machinery  
4 to make sure everything is setup for the next shift  
5 that's coming in. I have numbers and stuff I have  
6 to write down. So we'll know what was done the  
7 night before versus what we do during the day. Just  
8 in case the computers shut down on us. That way we  
9 can still give an accurate amount of what we ran for  
10 the day. I have to check my people time. If anyone  
11 calls in sick, I have to put in the computer why  
12 they called in, what they was out for, if they have  
13 any issues on the floor, I have to do that. I'm a  
14 first responder for this company. Anyone get hurts  
15 or anything, I have to go to the rescue. So I might  
16 have to bandage up some and take to the hospital for  
17 further treatment.

18 Q. You do it all. That's awesome. I think  
19 we produced this in discovery, but I'll redact it  
20 for the record. What's your Social Security number?

21 A. XXX-XX-XXXX.

22 MR. IPOCK: And Solange, I'll redact that  
23 for the record.

24 THE COURT REPORTER: Sure.

25 BY MR. IPOCK:

1 Q. Ms. Priscilla, are you currently married?

2 A. Excuse me, say that again?

3 Q. Are you currently married?

4 A. No, I'm divorced.

5 Q. Okay. Do you have any relatives that live  
6 in Horry County that are of the age of 18?

7 A. No.

8 Q. Okay. Are you a member, and again,  
9 forgive me, I know the answer to these, but I've got  
10 to ask.

11 A. No.

12 Q. Yes. Are you a member of any social  
13 organization or church or group of individuals in  
14 Horry County that are akin to that?

15 A. No.

16 Q. Have you ever filed for bankruptcy?

17 A. No.

18 Q. What's your highest level of education?

19 A. Twelve grade.

20 Q. Okay. Was that in Raeford?

21 A. Yes.

22 Q. What high school was that?

23 A. Hoke County High School.

24 Q. For James K. Polk, right?

25 A. Say who?

1 Q. Is that James K. Polk, P-O-L-K?

2 A. No.

3 Q. Oh, okay. Fair enough. All right. I  
4 don't want to know anything about what you talked  
5 about with your lawyer. I'm not going there at all.  
6 Outside of that, did you do anything to prepare for  
7 today's deposition like, reviewing documents,  
8 talking to folks, that sort of thing?

9 A. No, just, you know, just thinking about,  
10 you know, what had happened on that night. Just  
11 thinking back on it basically. Looking back over  
12 some of the pictures that my cousin had sent me to  
13 get ready for today.

14 Q. Fantastic. Well, let's just kind of jump  
15 right into it. Why -- so were -- the incident was  
16 November 24, 2018. So we're kind of going back in  
17 time.

18 A. Yes.

19 Q. Okay. So why were you in Myrtle Beach  
20 generally?

21 A. The family went down for Thanksgiving. We  
22 did Thanksgiving at the -- in Myrtle Beach.

23 Q. Who all was with you for the trip?

24 A. For the trip, it was several of us.

25 Q. Well, I tell you what, let -- let me -- I

1 might could help. It was Antesha Peterkin, was she  
2 there?

3 A. Yeah, it was five of us that night. It  
4 was six with myself that went out walking that  
5 night. It was Antesha Peterkin, Laquanda Peterkin,  
6 Lisa Hailey, Andre Godfrey, and Kaylin Tate.

7 Q. Okay. Perfect.

8 MR. IPOCK: And Solange, I can get you  
9 those names. No worries about that.

10 BY MR. IPOCK:

11 Q. So were -- was there any other family on  
12 the trip that went down to Myrtle Beach that wasn't  
13 walking with you that night?

14 A. Yes, my mother Lillian Dockry.

15 Q. Okay.

16 A. A cousin named Ann McClain. But she is  
17 deceased now. She died a week after we come back  
18 from the trip.

19 Q. Oh, gosh, Okay. I'm sorry.

20 A. And then I had my two grandsons, Ezra  
21 Peterkin, Quincy Moore and I had a girlfriend her  
22 name is Courtney Brown and her son. They all had  
23 came to dinner with us that night. We were doing a  
24 Thanksgiving day night.

25 Q. Y'all had a packed house.

1           A.    That's a little one.  Normally, we have  
2 about 25, 30 people.  That was a small group that  
3 time.

4           Q.    Well, good -- good for y'all.  Where were  
5 y'all staying, what hotel?

6           A.    At the Breakers.

7           Q.    I've got it, okay.  All right.  Do you  
8 remember what day of the night -- what day of the  
9 week the incident was?  I know it was November 24th,  
10 do you remember if that was a Sunday, Monday?

11          A.    It was a Saturday, Saturday night into  
12 Sunday morning because we were leaving out that  
13 Sunday morning.  We went walking that Saturday  
14 night.

15          Q.    Okay.  What did y'all -- do you remember  
16 what day you got into Myrtle Beach, was it that  
17 prior Saturday?

18          A.    No, I came in on that Wednesday.

19          Q.    Okay.  So tell me -- all right, you're  
20 there Wednesday, Thursday, Friday, y'all are going  
21 out on Saturday, what -- you leave -- walk  
22 through -- well, let me ask it better.

23                       How did you decide where to go to  
24 dinner that Saturday night?

25          A.    No.  We had dinner in the room.  We just

1 decided to walk after -- well, the dinner was  
2 earlier that day and when then we went on and loaded  
3 up. You know, we always load up the night before we  
4 going to leave out. That way you put the biggest  
5 stuff on the truck. You don't have to worry about  
6 it the next morning. So after we loaded up, we  
7 decided, you know -- I decided I wanted to take a  
8 walk on the strip because I hadn't been out all  
9 week, the whole while we had been there, I hadn't  
10 been out.

11 Q. Okay. So you already had dinner, you go  
12 back to the Breakers and then at the Breakers, you  
13 say, hey, let's go take a walk?

14 A. I had dinner at the Breakers. I cooked in  
15 my room.

16 Q. Okay. I've got it. Did you have any  
17 alcohol with dinner?

18 A. No.

19 Q. So I guess, did pretty much that whole  
20 group eat dinner there then with you at the Breakers  
21 there that evening?

22 A. Yeah, we ate dinner, some left after  
23 dinner, some went shopping, some of us stayed in the  
24 room and rested up until the rest of them come back  
25 from shopping. And then later on that night, we

1 started to load up and then after we loaded up, I  
2 decided I wanted to take a walk.

3 Q. Okay. Do you remember what timeish y'all  
4 left to go take that walk?

5 A. I know it had to be somewhere between 11  
6 and 12 because it ran into the next day -- I noticed  
7 when I was in the emergency room, it was after 12  
8 o'clock. So I knew it had to run into the next day.  
9 But I know we left before 12 going out walking.

10 Q. Okay. Okay. So you leave -- so y'all  
11 make the decision to go take a walk. Y'all start  
12 walking out the Breakers, how do you decide to go  
13 towards the -- well, I'm just going to call it  
14 Bummz. I mean, that's the easy way -- toward my  
15 client's restaurant, how did you start going that  
16 way versus another way?

17 A. Because we was walking that way to go to  
18 the -- coming out of the Breakers and you go to the  
19 left of you, Bummz Beach is right beside the  
20 Breakers. So we crossed the street over and got on  
21 that sidewalk to walk down, which was still walking  
22 down to the left -- on the left. We went -- the  
23 ferris wheel and the bungee jumping and all that  
24 stuff is down there. That big Myrtle Beach chair  
25 that you can take pictures in. They have statutes.

1 It's like a little amusement museum down there and  
2 stuff so we was walking down to that.

3 Q. Okay. So I'm real visual guy. So I'm  
4 seeing y'all walk out, y'all cross the street, not  
5 on the Bummz side of the street, but so you go to  
6 the other side of the street, go down?

7 A. Yes.

8 Q. But then y'all turn back around and you --  
9 when you fall, you were actually heading back to  
10 Breakers?

11 A. Yes, heading back to the hotel.

12 Q. Awesome, okay. So when you were walking  
13 down, I can't tell you the last time I was up at 11  
14 o'clock. I've got a bunch of small kids. So if I  
15 was up at 11, I would be eating ice cream or -- or  
16 drinking. So were you -- did you do either of those  
17 when you're walking down the street?

18 A. No, we just walked and talked and laughed  
19 and stopped and took some pictures and walked on  
20 down to the ferris wheel and the bungee jumping  
21 cord. You know, my daughter was like, mama, would  
22 you do that one day? I was like girl, no, I'm not  
23 getting up there. They're not shooting me up in the  
24 air.

25 Q. Fair enough. Okay. So y'all walk down,

1 y'all having a good time, chit chatting and you turn  
2 around?

3 A. Uh-huh.

4 Q. And you start coming back to the Breakers.

5 All right. So tell me what happens at that point,  
6 kind of walk me through -- your approaching --  
7 getting close to the Breakers and you -- and you  
8 fall. Tell me what happened?

9 A. Okay. So we were walking back from my  
10 little walk, and right after I passed the  
11 entranceway of the Bummz Beach where you can go into  
12 the door, a few steps up, I just feel my right foot  
13 tip forward. So I thought maybe I could break  
14 myself from the fall, if I put my hand down, but it  
15 was just -- it happened so fast, you know, I fell so  
16 fast. I hit the -- it's like my body bounced when  
17 it hit the ground.

18 Q. So you fell forward?

19 A. Yes.

20 Q. Okay. Did you break your glasses or hit  
21 your face when you fell?

22 A. No, because I only wear these when I  
23 really need to be reading. They only reading  
24 glasses.

25 Q. Okay. So were you -- were you kind of in

1 the back of the group, or in the front, or in the  
2 middle?

3 A. I was in the front to the right-hand side.  
4 I was on the outside. And it was like three of us,  
5 three in the front and then three -- three behind  
6 us. Because all of us couldn't walk side by side on  
7 the sidewalk because it was, you know, small.

8 Q. I've got you.

9 A. So it was me and my daughter Laquanda and  
10 my brother was walking at the front and then my  
11 sister and my cousin and my other daughter, they was  
12 like a few -- a fewer steps behind us but not much.

13 Q. Okay. And so when you said, you were on  
14 the outside of the sidewalk, so were you on the road  
15 side of the sidewalk?

16 A. No, I was on the sidewalk -- I was just on  
17 the outside of everyone else, you know. I was still  
18 on the sidewalk and my daughter was to the -- one  
19 was to left of me and my brother was to the left of  
20 me. I was to the right, you know, close to the  
21 Bummz Beach Cafe.

22 Q. I've got you, okay. All right. I'm going  
23 to pull up some pictures to kind of help us nail  
24 down where you best think you fell. Bear with me.  
25 I've got a gazillion screens here. I'll tell you

1 what I'd might do -- you've used that -- well, hold  
2 on. Okay. Ms. Peterkin, I'm going to share my  
3 screen with you.

4 A. Okay.

5 Q. So this picture we -- I think it is really  
6 a powerful picture. Your attorney was talking to my  
7 client about it and it's kind of given good  
8 perspective that we really previously haven't had.  
9 All right. So tell me if I'm wrong, I could be  
10 wrong. I'm not trying to trick you here. If I'm  
11 taking this picture, I am looking towards Breakers;  
12 is that right or do you know, can you tell me?

13 A. I'm not sure.

14 Q. Okay. So the -- the Bummz would be on the  
15 right?

16 A. Uh-huh.

17 Q. And you were on the left?

18 A. Yes.

19 Q. Okay. And so I am assuming that Breakers  
20 would have to be ahead of you and you --

21 A. About -- maybe about another 20 feet or  
22 something ahead of us.

23 Q. Is about where you fell?

24 A. I fell before I got to the Breakers.

25 Q. Okay. So looking at that picture, do you

1 believe that picture showed where you fell?

2 A. Yes.

3 Q. Okay. We can't obviously -- usually I  
4 just have you circle it -- but you can see where  
5 there's a change in color, it kind of goes from  
6 grayish to like a light gray or a white?

7 A. Uh-huh.

8 Q. Is that where you fell or that -- we'll  
9 call it that crack right before where that color  
10 change happens, is that what caused you to fall or  
11 do you know?

12 A. I'm not absolutely sure.

13 Q. Okay. All right. So if I ask you to tell  
14 us as best you can where you fell, what would you  
15 say?

16 A. Can you see my fingers and stuff?

17 Q. No. This is kind of the main drawback  
18 with Zoom.

19 THE COURT REPORTER: Pardon the  
20 interruption --

21 MR. IPOCK: I can't --

22 THE COURT REPORTER: Charlie, if you -- do  
23 you see where it says view options right next to  
24 where it says that you're that sharing your screen,  
25 there's a scroll down menu, and it says annotate.

1 Here, see my -- so maybe that helps. Just a  
2 suggestion.

3 BY MR. IPOCK:

4 Q. Great, okay. So I'm going to -- can you  
5 see my mouse, it's kind of right in the middle  
6 there?

7 A. Uh-huh, yes. Can you come back with your  
8 mouse into this -- into this crack? Because I  
9 remember when my foot went in, my foot tilted  
10 forward, but I was a little closer to the bush.

11 Q. Okay.

12 A. Come down.

13 Q. All right. Let me ask you this, because  
14 this might help. So when you were saying earlier  
15 you were on the outside of the group, were you more  
16 close to the -- again, the business being on the  
17 right and the road being on the left, were you  
18 closer to the left or the right?

19 A. I was -- I was close to the business on  
20 the right.

21 Q. Okay. I can't -- so where -- do you think  
22 or do you know, if you would have tripped on that  
23 crack or one of these other lines here, that I'm  
24 kind of drawing diagonal or do you know?

25 A. I'm not absolutely sure about that. I

1 just know my foot stumbled forward and I'm  
2 staying -- I'm closer to the crack. My foot went  
3 forward and that was it, I couldn't break a fall.

4 Q. Okay. All right.

5 MR. IPOCK: Just for the record, we're  
6 looking at Plaintiffs Exhibit Four. I'll make it an  
7 Exhibit to mine, to this deposition as well.

8 (Defendant's Exhibit No. 1, PHOTOGRAPH, was  
9 marked for identification.)

10 BY MR. IPOCK:

11 Q. All right. Ms. Priscilla, I just want  
12 to -- I want to try to be as clear as I can because  
13 us lawyers got to fuss and fight over it. If I ask  
14 you at a trial, okay, where you fell, is it going to  
15 be your testimony that, Mr. Ipock, I just don't  
16 remember if it was this, what I'll call the crack,  
17 or these diagonal lines?

18 A. I know I didn't make it to the diagonal  
19 lines. My body was laying across the diagonal  
20 lines. So this -- you know, my knees was basically  
21 up there near the diagonal lines. So I didn't make  
22 it that far before I fell. I fell more back here by  
23 the crack.

24 Q. Okay. So that may be helpful. Let me do  
25 this then, I'm going to stop this share. Okay. So

1 I'm going to share this. All right. Can you see  
2 that picture, that's you with the medics on the  
3 ground?

4 A. Yes.

5 Q. Okay. So does that help kind of jog your  
6 memory, maybe it does, maybe it doesn't. Does that  
7 help at all?

8 A. I know after I fell, because I fell  
9 forward, I know I rolled over a couple of times  
10 because I was going to try to get up, but my dagum  
11 shoulder was hurting so bad, that's why I told them  
12 to call 911.

13 Q. Right. But you get -- so you -- to get  
14 there were you currently are laying, did you --  
15 your -- the beginning of your fall was some line  
16 behind it, but you fall forward and roll and all  
17 that?

18 A. Yes.

19 Q. Okay.

20 A. Yes.

21 Q. Okay.

22 MR. IPOCK: I'll mark that too. Solange,  
23 I'll shoot you an email with that.

24 THE COURT REPORTER: Thank you.

25 MS. SPENCER: Mark it as what?

1 MR. IPOCK: I'll mark it as Two.

2 (Defendant's Exhibit No. 2, PHOTOGRAPH, was  
3 marked for identification.)

4 BY MR. IPOCK:

5 Q. Let's see. And also one more. Now, you  
6 are back on your back. Same thing here. So it may  
7 be helpful -- I'll jut let you kind of digest that  
8 picture and I'm going to throw backup my Exhibit  
9 One, okay. So what I'm going to ask is, you know,  
10 they are standing on that kind of a wooden, I call  
11 it boardwalk. It's not a boardwalk, but that's what  
12 I call it, the wooden boards there?

13 A. Uh-huh.

14 Q. For a frame of reference, okay. So we got  
15 that, and then -- all right. I'm going to stop the  
16 share and show you this again, okay. All right. So  
17 we're looking back at that. So for a frame of  
18 reference, you got the diagonal lines, as I call  
19 them, and the crack is that there somewhere well in  
20 front of -- I said, well -- let me start over and  
21 ask a better question.

22 You can see for a frame of reference  
23 when you were lying on the ground was relatively  
24 close or on that board; is that fair?

25 A. That's fair.

1 MS. SPENCER: Objection.

2 BY MR. IPOCK:

3 Q. So does that help refresh your  
4 recollection as to whether or not you may have  
5 tripped on the crack versus the diagonal lines or  
6 something else?

7 MS. SPENCER: Objection. Counsel is  
8 testifying.

9 BY MR. IPOCK:

10 Q. You can answer, ma'am. So the question  
11 is: Does being shown those pictures help you recall  
12 what you may or may not have fallen on?

13 A. Yes, I still know I fell close to the  
14 crack because I fell forward and I rolled over. I  
15 know when I fell, I rolled over because I didn't  
16 think it was that bad until when I rolled over and I  
17 was going to try to roll over and get up and I had  
18 to just grab my right shoulder.

19 Q. Right. Okay. So -- so you see -- was  
20 there anything impeding -- scratch that. Let me ask  
21 a better question.

22 Was there anything that you attribute  
23 to your fall -- even better.

24 What do you attribute your fall to?

25 A. Just a trip and fall. It was --

1 Q. Was there --

2 A. I don't know no nothing I could have done  
3 that could have caused my fall. I had on flat  
4 leather tennis shoes. They were like leather slip  
5 on tennis shoe.

6 Q. So when we get to trial and I ask that --  
7 that same question, what caused you to fall, what's  
8 your answer going to be?

9 A. A trip and fall.

10 Q. So did you trip on your self?

11 MS. SPENCER: Objection. Asked and  
12 answered.

13 BY MR. IPOCK:

14 Q. You can answer, Ms. Peterkin. Did you  
15 trip on your shoe, or your foot, or something else?

16 A. No, I did not trip on my shoe or my foot.

17 Q. Okay. But you're unsure of the mechanism  
18 of your fall, you don't know if you -- if the crack  
19 caused you to fall or something else caused you to  
20 fall, if the diagonal that caused you to fall; is  
21 that fair to say?

22 MS. SPENCER: Objection. Ambiguous and  
23 misleading.

24 MR. IPOCK: That's a speaking objection  
25 and I'll let you object but...

1 MS. SPENCER: Can we go off the record for  
2 just one moment? Just one moment?

3 MR. IPOCK: Sure.

4 (A recess was taken.)

5 BY MR. IPOCK:

6 Q. Ms. Peterkin, I think I was as clear as  
7 I'm going to get on what may or may not have caused  
8 your fall. So tell me when you fell, what -- kind  
9 of the first thing that happened? I think you said  
10 earlier you asked someone to call 911?

11 A. Yeah, when I fell and I rolled over  
12 because I was going to try to roll over and let  
13 somebody pull me up, but when I rolled over, I was  
14 just like, I don't -- there is something going on  
15 with this shoulder. There is something going on  
16 with my right shoulder because I had a pain that  
17 came from my earlobe down my right shoulder. And  
18 then my hand was throbbing.

19 So being a first responder, I know a  
20 lot of times you are not supposed to move a person  
21 when they fall. When I fell I hit -- fell forward,  
22 I know my head bumped the sidewalk. And I just told  
23 her, you know, just call 911. Let me find out  
24 what's going on.

25 Q. And so when you began to fall and when you

1 hit the ground, all of that happened on the  
2 sidewalk; is that correct?

3 A. Yes.

4 Q. So you say -- what you just said, first  
5 responders come, what do the first responders do?

6 A. First thing they did was they asked me a  
7 couple of questions. Where was I hurting at and I  
8 told them where I was hurting, you know, by the time  
9 they got there, my body was starting to get cold  
10 because the sidewalk was cold from being the winter  
11 month. So my body had like a little tremble to it.  
12 So -- they asked some questions. I told them that I  
13 was hurting from my earlobe coming down to my  
14 shoulder and, you know, my knee had a little scratch  
15 on it, and my hand had just started to swell. These  
16 two fingers here had started to swell (indicating).

17 So they stabilized me. They told me  
18 that were going to get me stabilized, put a neck  
19 collar on and put the board under me and then the  
20 rescue squad came. Because the fire department got  
21 there first.

22 Q. And so what did they -- what did you tell  
23 them what happened?

24 A. I told them I fell. I was walking and I  
25 just -- my foot titled forward and I fell.

1 Q. Okay. All right. So you are transported  
2 by EMS to Grand Strand?

3 A. Uh-huh.

4 Q. Is that your recollection?

5 A. Yes.

6 Q. Okay. So what happened when you got  
7 there?

8 A. When I got to Grand Strand, they took me  
9 in, they examined me some, they took me down to do  
10 an MRI and, you know, even when I was in the rescue  
11 squad before we got to Grand Strand, I kept telling  
12 the guy that, this arm was aching so and it was  
13 dropped down some. So he put a -- rolled a towel  
14 and put it underneath it, and rest it, sort of kind  
15 of across my stomach to stabilize it.

16 So when we got in the hospital, he  
17 told them that I was having some issues with the  
18 shoulder and the arm aching. So they took me to do  
19 an MRI, and when we got in there, the first thing  
20 the people told me, when they got their stuff back  
21 from the MRI, they was like, I had a broke  
22 collarbone. But when I got to Raeford and I went to  
23 the doctor here, they said it was like a hairline  
24 fracture.

25 Q. Yeah. So that was going to be my question

1 of -- you got those X-rays done, what, to the best  
2 of your recollection, was the kind of definitive  
3 or -- or concluding diagnosis?

4 A. At the hospital they said I had broken my  
5 collarbone. That was told to me at Grand Strand  
6 Hospital.

7 Q. I've got it.

8 A. So they gave me some medication and they  
9 put me in an arm brace and stuff like that.

10 Q. Okay. Great. So you -- you get out from  
11 there, which I guess gosh, probably early morning  
12 hours, right?

13 A. Yes.

14 Q. So you -- what do you then do, go, I guess  
15 you've got to go back to Breakers and get checked  
16 out, et cetera, et cetera?

17 A. Yeah, we went back to Breakers and because  
18 of what happened, the people at Breakers extended --  
19 we supposed to be checked out by 11. They just told  
20 us that they would give us until one o'clock because  
21 we had done been at the hospital for the majority of  
22 the night.

23 Q. At any point, did you contact the City of  
24 Myrtle Beach, Bummz, or anyone else about the  
25 incident?

1 A. No, sir.

2 Q. Because you weren't -- you weren't dining  
3 at Bummz and you did not intend to be a patron at  
4 Bummz; is that correct?

5 A. No, sir.

6 Q. So you get to Breakers, you get checked  
7 out, you go see another provider back home; is that  
8 right, tell me a little bit about that?

9 A. Yes, when I went there, and I can't think  
10 of the name of it now. Oh God, I can't think of the  
11 name of the office that I went to.

12 Q. Cape Fear Ortho?

13 A. Yes. So when I went there, they did some  
14 more X-rays and that's when they told me it wasn't  
15 broken. It was a hairline fracture. And it had a  
16 crack, but as long as I kept it stabilized, it  
17 should mend back together. No lifting or pushing or  
18 pulling or tugging for a couple of weeks and we were  
19 going to do physical therapy.

20 Q. Yeah. Great. Got it. Okay. So I'm  
21 going to share a document with you here. This is  
22 from Cape Fear Orthopedic. This was produced by  
23 y'all. On Zoom, it's -- I can't see the picture.  
24 Let's see. Yeah, Plaintiff's 80. Can you -- can  
25 you read that passage or is it too small? Let me

1 blow it up a little bit. There we go.

2 A. Okay.

3 Q. All right. So under history of present  
4 illness -- and take your time and look at as much as  
5 you need to, but it reads that, Priscilla states  
6 that the symptoms begun as the result of tripped  
7 over concrete and fell.

8 Is that an accurate reading, I think  
9 that's like the fourth, fifth sentence in the first  
10 paragraph?

11 A. Yes. Because I told them I tripped on some  
12 concrete at the beach.

13 Q. Great. And that is in fact, accurate  
14 that -- well, strike that.

15 MR. IPOCK: I'll mark this as Exhibit  
16 Three.

17 (Defendant's Exhibit No. 3, 11/27/2018 CAPE  
18 FEAR ORTHOPEDICS MEDICAL RECORD, was marked for  
19 identification.)

20 BY MR. IPOCK:

21 Q. I'm sorry, I was reading part of what I  
22 want ask. It also says, that she indicates injury  
23 occurred at the beach on the sidewalk. And I think  
24 that's the sentence proceeding what we just read.  
25 Is that a fair reeding of that? She indicates the

1 injury occurred at the beach on the sidewalk?

2 A. Yes.

3 Q. Okay. And that is correct, right, it  
4 happened on the sidewalk?

5 A. Yes.

6 Q. Okay. All right. Okay. So you got post  
7 that doctor's visit and then you do physical  
8 therapy; is that right?

9 A. Yes.

10 Q. It looks like you had pretty good results  
11 from it, is that -- so tell me kind of as you sit  
12 there now, how's Ms. Priscilla doing, what  
13 limitations do you have that you maybe didn't have  
14 prior to the incident?

15 A. I still have a lot of sharp pain that runs  
16 through here. And they was like, it can take years  
17 for all that to really heal, heal, to where you will  
18 be able to -- I'm the type of person I like to do a  
19 lot of lifting, a lot of moving around, I do a  
20 little catering and you know, so I'm lifting big  
21 shakers and different stuff like that. So sometimes  
22 my arm tired out a lot faster than it used to.

23 Q. Okay. I've got it. Do you have any  
24 planned physician visits relating to this incident  
25 or are you, as far as you know, you're kind of done

1 treating?

2 A. No, I'm done treating. I -- they gave me  
3 some exercises that I still do at home. I was able  
4 to buy the little thing to hang on the door to be  
5 able to pull and stretch.

6 Q. Uh-huh.

7 A. And they gave some me bands that I could  
8 put up -- put on the doors and be able to stretch my  
9 bands. And there's like, you know, just -- you  
10 know, when you start feeling tight, just use this to  
11 help get your -- you know, loosen your muscles up  
12 and stuff back up.

13 Q. Right.

14 A. I use a lot of Icy Hot now.

15 Q. Okay. So somewhat akin to that, did you  
16 miss work because of this incident?

17 A. The first -- the week after -- the week  
18 that -- the week after it happened I stayed out that  
19 whole week. Getting into my doctor's appointments,  
20 getting some X-rays -- so at the end of the week, my  
21 supervisor called me and he was like, I'll let you  
22 come back to work to watch your floor. You don't  
23 have to do any lifting or any moving or bending  
24 because I was still in the sling. I wore the arm  
25 sling for about a month.

1 Q. Okay. And so y'all produced a document --  
2 I'll throw it up here. If you look at -- it's  
3 entitled Medical Summary. If you look toward the  
4 bottom there, it says, lost wages \$724.52. Is that  
5 what you missed from being out that week?

6 A. For that week.

7 Q. Okay. I've got it.

8 MR. IPOCK: I'll mark that as Defendant's  
9 Four.

10 (Defendant's Exhibit No. 4, PRISCILLA PETERKIN  
11 MEDICAL SUMMARY, was marked for identification.)

12 BY MR. IPOCK:

13 Q. Okay. All right. Help me through -- I  
14 saw this document, but I didn't really know what it  
15 was. All right. Can you see that it's a PMA  
16 Companies Wage and Salary Verification?

17 A. That's the document that the -- from my --  
18 let me make sure. Yeah, that's the document that HR  
19 filled out for me to show where I was out of work  
20 for my lost wages and, you know, what I make per  
21 hour and all that stuff.

22 Q. Okay. So Connie --

23 A. In HR.

24 Q. So she is employed with your company?

25 A. Yeah, she's our HR assistant.

1 Q. Okay. So if you look towards the top it  
2 says, date April 25, 2019, our policyholder City of  
3 Myrtle Beach. How -- do you understand how they --  
4 I'm trying to figure out why Myrtle Beach's name is  
5 there?

6 A. I don't know. I don't know.

7 MR. BAXTER: Can we go off the record?

8 MR. IPOCK: Sure.

9 (A recess was taken.)

10 MR. IPOCK: Okay. For purposes of the  
11 record, I had a conversation with counsel and  
12 clarified what I needed to there. I won't mark  
13 that.

14 BY MR. IPOCK:

15 Q. All right. So you're comfortable with the  
16 lost wages being that \$724.52; is that fair?

17 MS. SPENCER: Objection.

18 BY MR. IPOCK:

19 Q. Ms. Priscilla, are you claiming any  
20 additional lost wages in excess of the \$724.52?

21 A. None from my job.

22 Q. Okay. Just so I'm right on the record,  
23 let me just make sure that's -- the numbers I have  
24 on this other document. Yeah, okay. Okay.

25 Ms. Priscilla, I think I've answered

1 a lot of the questions that I have. The -- I was  
2 going to ask you about the witnesses, but I think --  
3 I think that they were with you the night of the --  
4 when you were walking so that's going to answer  
5 that.

6 MR. IPOCK: Let me just look through a  
7 couple of my pictures and I think that might cover  
8 it. Bear with me one minute.

9 BY MR. IPOCK:

10 Q. All right. Just one little quick  
11 follow-up. I'll throw this picture up here.

12 All right. This is back to that  
13 picture we were looking at earlier. It's marked as  
14 Plaintiff's Exhibit Four, but I'll -- I think it's  
15 Number 1 for our transcript purposes. Do you see on  
16 the right-hand side a palm bush or some other  
17 shrubbery. Do you see that on the right?

18 A. Uh-huh.

19 Q. Did that cause you to fall?

20 A. I can't say that it did.

21 Q. Just so I understand that, is that a no it  
22 did not cause --

23 A. No.

24 Q. Okay.

25 MR. IPOCK: I think that's all the

1 questions I have. Doug who represents the City may  
2 have a couple of follow-up questions.

3 MR. BAXTER: I do.

4 EXAMINATION

5 BY MR. BAXTER:

6 Q. Ms. Peterkin, my name is Doug Baxter. I  
7 represent the City of Myrtle Beach and I am going to  
8 kind of jump around and fill in some questions, I  
9 apologize if I missed something, but how many  
10 children do you have?

11 A. I have three children.

12 Q. And they are all grown?

13 A. Yes, sir.

14 Q. And how many grandchildren?

15 A. Two grandkids.

16 Q. And you mentioned that this was not the  
17 first time y'all had come down for Thanksgiving.  
18 Approximately how many times do you think y'all had  
19 come to Myrtle Beach for Thanksgiving visits?

20 A. That's the first time we stayed at the  
21 Breakers though, when came for Thanksgiving.

22 Q. Okay. And where in the City --

23 A. We have been going down for Thanksgiving  
24 for about, maybe 10 years off and on.

25 (The proceedings were interrupted.)

1 BY MR. BAXTER:

2 Q. Okay. And it sounds like this trip, it  
3 was your mother and some siblings and cousins and  
4 your two grandsons and then just some family friends  
5 is that?

6 A. Yes, at this hotel, but it was more of  
7 them -- more people was there that we went, you  
8 know, they visit throughout the thing because we  
9 couldn't get to where we normally stay because it  
10 was full. So we booked the Breakers.

11 Q. Okay.

12 A. Away from everyone else.

13 Q. So there was actually other family members  
14 and friends staying at other --

15 A. It was friends and stuff down there. You  
16 know, we all normally go during the Thanksgiving  
17 holiday.

18 Q. And so after you ate dinner on Saturday,  
19 you were planning on going back Sunday, correct?

20 A. Yeah, leaving to come home on Sunday.

21 Q. And you went ahead and put some of your  
22 luggage in your car that evening?

23 A. Yes.

24 Q. And then you, how many people walked to  
25 the downtown area where the SkyWheel was and the

1 bungee jump and all that?

2 A. It was six of us, including -- including  
3 me, six.

4 Q. Okay. And do you know about what time you  
5 left downtown to start walking back?

6 A. No. It was probably somewhere around  
7 11ish.

8 Q. And I think you -- you said that there  
9 was -- you -- because of -- there is six people you  
10 couldn't all walk side by side on a sidewalk, so you  
11 kind of broke up, correct?

12 A. Yes.

13 Q. And it was you and two other people beside  
14 you on the sidewalk, correct?

15 A. Yes.

16 Q. Okay. Who were the other two people?

17 A. My daughter Laquanda Peterkin and my  
18 brother Andre Godfrey.

19 Q. And then the other three, were they in  
20 front of you or behind you?

21 A. They were behind us.

22 Q. Okay.

23 MR. BAXTER: And Charles, can I get you to  
24 pull up the photograph in your email that says page  
25 six?

1 MR. IPOCK: Sure.

2 MR. BAXTER: And has that been marked as  
3 an Exhibit?

4 MR. IPOCK: Let's see, yeah, that was  
5 Three. I'll throw it up here.

6 THE COURT REPORTER: That's Exhibit Two.

7 MR. BAXTER: Okay. So that's two?

8 THE COURT REPORTER: Yes, sir.

9 BY MR. BAXTER:

10 Q. Ms. Peterkin, you're looking at what has  
11 been marked as Defendant's Exhibit Number Two, which  
12 is a photograph that shows you laying on the ground  
13 being attended to by EMS; is that correct?

14 A. Uh-huh, yes.

15 Q. And in the photograph your feet are -- are  
16 or near or touching some -- some palms, you know  
17 small palms, plants or bushes; is that correct?

18 A. Yes, sir.

19 Q. Now, when you were walking those would  
20 have been to your right side, correct?

21 A. Yes.

22 Q. Do you know -- were you actually touching  
23 those plants?

24 A. I cannot remember.

25 Q. And when you fell forward, how did you

1 land, face first?

2 A. Face first.

3 Q. Okay. And my understanding you -- you  
4 landed face first and then you rolled over?

5 A. Yeah, I rolled over.

6 Q. And when you were rolling over you  
7 realized that -- that your shoulder or arm was  
8 injured, correct?

9 A. Yes.

10 Q. And now when you rolled over, which way  
11 did you role to your right or to your left?

12 A. I rolled to my right.

13 Q. Okay. And so you -- because of your  
14 injury, you only rolled half of a turn, correct?

15 A. Yes, I rolled -- at first, I rolled over  
16 to my side.

17 Q. Okay.

18 A. And then I did a complete roll over.

19 Q. Well, let me -- I want to make sure.  
20 You're laying face first when you first fall,  
21 correct?

22 A. Yes, laying face first.

23 Q. Okay. Then you roll over to your right  
24 onto your side, correct?

25 A. Yes, because when I fell face first, I

1 rolled over because that shoulder was hurting. So I  
2 rolled over to my right and grabbed it and laid  
3 there for a couple of seconds. And then I rolled  
4 back over to the left of me and stretched out.

5 Q. Okay. But you -- when you rolled over,  
6 you never rolled back so that you were laying face  
7 down, correct?

8 A. No, I never laid face down.

9 Q. Okay.

10 A. I rolled so I would be face up.

11 Q. Okay. So you did a half of a roll, you  
12 went from laying face down to face up, correct?

13 A. Yeah.

14 Q. Now, when you fell, you were -- you were  
15 coming from downtown walking towards the Breakers  
16 and Bummz Cafe was now on your right, correct?

17 A. Yes, sir.

18 Q. And in the photograph you're laying -- you  
19 see there is part sidewalk and part -- some like,  
20 wooden boards for the ramp to the cafe?

21 A. Uh-huh.

22 Q. When you fell, had you gotten to the ramp  
23 into Bummz Cafe yet?

24 A. I don't think that's the ramp to Bummz  
25 Cafe. I think that's the ramp to -- ain't that the

1 ramp that you can take to go out to the beach?

2 Q. Well, let me ask you this: Regardless of  
3 what it's the ramp to, had you gotten to --

4 A. But I hadn't gotten all the way to that  
5 ramp before I fell though. No, I hadn't gotten that  
6 far. I was a couple of steps away from the ramp  
7 when I fell.

8 Q. Now, did -- was it your right foot or your  
9 left foot that caught or whatever that caused you to  
10 fall?

11 A. The right foot.

12 Q. Okay. Now, who took the photographs?

13 A. I'm not sure if my daughter or my cousin  
14 took those.

15 Q. Okay.

16 MR. BAXTER: And Charlie, I'm going to  
17 need your assistance again.

18 MR. IPOCK: Sure.

19 MR. BAXTER: If you would pull up what  
20 you've got marked as pic four.

21 MR. IPOCK: Can y'all see that okay?

22 THE WITNESS: Yes.

23 MR. BAXTER: Okay. And has that been  
24 marked as an exhibit?

25 MR. IPOCK: Not that one.

1 MR. BAXTER: Okay. Can we mark that as  
2 Exhibit -- what would be next Defendant's Exhibit?

3 THE COURT REPORTER: Five.

4 (Defendant's Exhibit No. 5, PHOTOGRAPH, was  
5 marked for identification.)

6 BY MR. BAXTER:

7 Q. Okay. Ms. Peterkin, I'm showing you  
8 what's been marked as Defendant's Number Five and  
9 would that have been a photograph that your daughter  
10 or someone with you would have taken?

11 A. Yes.

12 Q. Okay. And do you know why she took that  
13 photograph?

14 A. They just took a photograph of the area  
15 that I fell in.

16 Q. Okay. But you didn't tell her take a  
17 photograph of this. She just took --

18 A. No, sir, I was at -- I was in too much  
19 pain to do anything but get me some help.

20 Q. Okay. And looking at this photograph,  
21 there is a -- there is straight lines that form an  
22 X; do you see that?

23 A. Yes.

24 Q. Okay. And then there is a -- running off  
25 one of the straight lines is a longer crack; do you

1 see that?

2 A. Yes.

3 Q. And then kind of at the -- towards the  
4 bottom of photograph, there is almost like a  
5 triangle shape piece of concrete; do you see that?

6 A. Yes.

7 Q. Okay. And then at the very bottom,  
8 there's some places where there's -- lines meet and  
9 it looks like a little bit of mulch; do you see  
10 that?

11 A. Yes.

12 Q. Okay. Now, it's my understanding your  
13 testimony is that you can't tell me exactly what  
14 your foot tripped on in this photograph, correct?

15 A. No, sir, just the sidewalk.

16 Q. Okay.

17 A. Concrete.

18 Q. But as far as the -- the long crack versus  
19 the triangle shape versus the very bottom there, the  
20 mulch, you can't tell me exactly what your foot  
21 caught on?

22 A. Not exactly.

23 Q. And looking at this photograph, can you  
24 say for certain that that shows what your foot  
25 caught on?

1           A.    I would think that it -- it got caught  
2 between the crack.

3           Q.    But if I were to give you some way with a  
4 pen to mark it, you couldn't circle exactly where on  
5 the crack or -- or --

6           A.    No, sir, not exactly where, I could not.

7           Q.    How long were you at the hospital?

8           A.    Probably about four hours, maybe three to  
9 four hours.

10          Q.    And they did X-rays?

11          A.    Yes. They did an MRI at the hospital.

12          Q.    Okay.

13          A.    Where they put you in that little thing.

14          Q.    The big tube?

15          A.    Yes.

16          Q.    And then it looks like a couple of days  
17 later when you went back home, you went and saw the  
18 orthopedic surgeon, correct?

19          A.    Yeah, they told me to follow-up with the  
20 orthopedic. They had told me one in South Carolina,  
21 but I told them that I lived in North Carolina.  
22 That I would have to find one, you know, close to my  
23 hometown to keep from traveling back and forth to  
24 South Carolina.

25          Q.    Okay. Now, have you ever been to see

1 that -- see that orthopedic surgeon or anyone in his  
2 practice before?

3 A. No, sir.

4 Q. And how did you know to choose him?

5 A. My oldest daughter is an attorney and she  
6 had contacted some people that she knew in the  
7 health field and ask them, you know, what would be a  
8 good orthopedic for me to go to.

9 Q. I've got you. And then you were out of  
10 work -- let me ask you, how many times did you go to  
11 physical therapy?

12 A. We did physical therapy -- I think we did  
13 twice a week for -- no, we did three times a week  
14 for the first two weeks. Then we went twice a week  
15 and we did that for about maybe three or four more  
16 weeks.

17 Q. And you have health insurance?

18 A. Yes, sir.

19 Q. And to your knowledge have all the bills  
20 been paid?

21 A. Not -- I don't think they have. Not to my  
22 knowledge, I don't think so.

23 Q. Okay. Do you know which bills have not  
24 been paid?

25 A. No, sir, I don't know exactly what hasn't

1 been paid.

2 Q. Okay. Are you getting letters from  
3 anybody saying, hey, you need to pay this bill or?

4 A. When I first -- I was getting letters and  
5 then I was told to let them know that, you know, I  
6 had lawyer on the case because, you know, my  
7 insurance paid their part and then I guess what was  
8 left out-of-pocket for me to pay.

9 Q. Okay. Now, had you -- either when you  
10 were walking to downtown or coming back from  
11 downtown, had you noticed anything about the  
12 sidewalks?

13 A. No, I really wasn't paying any attention  
14 to the sidewalk.

15 Q. And did you personally talk to anyone with  
16 the City of Myrtle Beach?

17 A. No, sir.

18 Q. And other than your attorney, do you know  
19 of anyone that spoke to the City of Myrtle Beach on  
20 your behalf?

21 A. No, sir.

22 Q. Okay. Why are you suing the City of  
23 Myrtle Beach?

24 A. I was just trying to get to the bottom of  
25 who need to take care of my fall.

1 Q. Well, do you contend that the City of  
2 Myrtle Beach did anything wrong?

3 A. I don't know because I'm not -- I don't  
4 know whose responsible for keeping the sidewalks up.

5 MS. SPENCER: Objection.

6 BY MR. BAXTER:

7 Q. And one second -- strike that.

8 Do you have any information that  
9 anyone else has fallen in that area?

10 A. No, sir.

11 MR. BAXTER: Charlie, you can take that  
12 picture down, sorry.

13 MR. IPOCK: Okay.

14 BY MR. BAXTER:

15 Q. And I think that you mentioned it, but  
16 what problems are you currently having which you  
17 believe were as a result of the fall?

18 A. I still have some tingling in the side of  
19 the neck and on that shoulder and the back of that  
20 shoulder blade. It aches from time to time.

21 Q. Is there -- are there any activities that  
22 you can't do anymore that you could do before this  
23 injury?

24 A. I don't do any lift -- heavy lifting  
25 anymore.

1 Q. Either your daughter or the people behind  
2 you, did any of them say they saw what -- saw you  
3 fall or what caused you to fall or just, they said  
4 they realized you were falling?

5 MS. SPENCER: Objection. Hearsay.

6 BY MR. BAXTER:

7 Q. You can answer it.

8 A. Could you repeat it again.

9 Q. Okay. Did any of the other five people  
10 that were with you that evening, did they tell you  
11 they saw you fall or they saw what caused you to  
12 fall or just suddenly they realize you were falling?

13 MS. SPENCER: Have the objection noted for  
14 record, please.

15 BY MR. BAXTER:

16 Q. You can answer.

17 A. No, they didn't tell me that they saw me  
18 fall.

19 Q. Now, the daughter that took the photograph  
20 is she one that's a lawyer?

21 A. No.

22 Q. Okay. And tell me again which daughter  
23 took the photograph? I apologize if you told me.

24 A. Her name is Laquanda.

25 Q. And do you know if she took other

1 photographs as well?

2 A. It may be some more. I'm not sure and I  
3 know my cousin Lisa also took some photographs.

4 Q. Okay. Can you check with Laquanda and  
5 Lisa to see if they have any other photographs that  
6 they took?

7 A. I'll find out.

8 Q. And provide those to your attorney?

9 A. Okay.

10 MR. BAXTER: That's all I have.

11 MS. SPENCER: I do have some additional  
12 questions. Ms. Peterkin, do you need water or  
13 anything or are you good?

14 THE WITNESS: I'm good.

15 EXAMINATION

16 BY MS. SPENCER:

17 Q. All right. Just a few minutes more of  
18 your time.

19 A. Okay.

20 Q. Ms. Peterkin, you're from North Carolina,  
21 right?

22 A. Yes, ma'am.

23 Q. You were just visiting Myrtle Beach?

24 A. Yes.

25 Q. And this fall happened on your visit to

1 the City of Myrtle Beach?

2 A. Yes.

3 Q. And you said, you were walking right  
4 around midnight?

5 A. Yes, between 11 and 12.

6 Q. Uh-huh. And when you left your hotel, you  
7 walked across the street to the opposite side  
8 sidewalk, right?

9 A. Yes, ma'am.

10 Q. So you were going to make a big loop that  
11 night from your hotel on around back to your hotel?

12 A. Yes.

13 Q. And you went down to the carousel at the  
14 end of the road?

15 A. Yes.

16 Q. And you came on around and at that point  
17 you were walking on the sidewalk that is adjacent to  
18 the Breakers Hotel and Bummz on Beach Cafe and Bar?

19 A. Yes, ma'am.

20 Q. You were walking on the same side as Bummz  
21 Beach Cafe when you tripped and fell?

22 A. Yes.

23 Q. And it was dark outside, correct?

24 A. Yes.

25 Q. And you were the first person in your

1 group?

2 A. Yes.

3 Q. And again, you were on the right side  
4 closest to that palm bush tree, correct?

5 A. Yes.

6 Q. And the bush overhangs the sidewalk to a  
7 degree. I'm going to bring up Plaintiff's Exhibit  
8 Four. It's been previously marked.

9 (Plaintiff's Exhibit No. P4, PHOTOGRAPH,  
10 was marked for identification.)

11 BY MS. SPENCER:

12 Q. Do you see Plaintiff's Exhibit Four,  
13 Ms. Peterkin?

14 A. Yes.

15 Q. Was this taken near the area where you  
16 fell? Does this accurately represent the place  
17 where you fell?

18 A. Yes, in that area.

19 Q. And you, Ms. Peterkin fell on a crack,  
20 didn't you?

21 A. Yes.

22 MR. IPOCK: Object to the form.

23 BY MS. SPENCER:

24 Q. And you fell on a crack, didn't you?

25 A. Yes.

1 Q. That was a yes?

2 A. Yes.

3 MR. IPOCK: Object to the form.

4 BY MS. SPENCER:

5 Q. There is only one crack in this photo,  
6 isn't it?

7 MR. IPOCK: Objection.

8 THE WITNESS: Yes.

9 BY MS. SPENCER:

10 Q. And when you fell that night, I'm going to  
11 stop sharing Plaintiff's Four, your family members  
12 were concerned, weren't they?

13 A. Yes.

14 Q. And they took pictures of where you fell,  
15 didn't they?

16 A. Yes.

17 Q. And those pictures were provided to you,  
18 correct?

19 A. Yes.

20 Q. And you provided those pictures to me?

21 A. Yes.

22 Q. I'm going to show you Plaintiff's Exhibit  
23 Five, which was previously marked.

24 MS. SPENCER: Doug, taught me some fancy  
25 stop and starting. So I think it's --

1 MR. BAXTER: You got to have the picture  
2 open before you do the share screen.

3 MS. SPENCER: Yeah, yeah. Do you guys see  
4 it? Do you guys see that photo of Plaintiff's  
5 Exhibit Five?

6 (Plaintiff's Exhibit No. P5, PHOTOGRAPH,  
7 was marked for identification.)

8 BY MS. SPENCER:

9 Q. Do you see it, Ms. Peterkin?

10 A. Yes.

11 Q. This is a crack in the sidewalk, correct?

12 A. Yes.

13 Q. It looks similar to the crack that's in  
14 the sidewalk of Plaintiff's Exhibit Four that I just  
15 showed you, doesn't it?

16 A. Yes.

17 Q. And this crack in the sidewalk has a bush  
18 hanging over it, doesn't it?

19 A. Yes.

20 Q. And it appears to be the same type of bush  
21 that was in Plaintiff's Exhibit Four, doesn't it?

22 A. Yes.

23 Q. I'm going to stop sharing this image.  
24 Ms. Peterkin, I hate to do this to you, but I'm  
25 going to bring up Plaintiff's Exhibit Number Eight.

1 A. Okay.

2 Q. Slowly, but I'm going to bring it up. All  
3 right. This is you in Plaintiff's Exhibit Eight,  
4 isn't it?

5 A. Yes.

6 Q. You are on the ground?

7 A. Yes.

8 Q. You had just fallen on the sidewalk,  
9 correct?

10 A. Yes.

11 Q. And you were in front of Bummz Beach Cafe  
12 and Bar?

13 A. Yes.

14 Q. You were in a lot of pain, weren't you?

15 A. Yes.

16 MS. SPENCER: At this time I want to enter  
17 Plaintiff's Exhibit Eight into the record.

18 (Plaintiff's Exhibit No. P8, PHOTOGRAPH,  
19 was marked for identification.)

20 BY MS. SPENCER:

21 Q. Ms. Peterkin, you found out you have  
22 fractured scapula as a result of the fall, right?

23 A. Yes.

24 Q. That's a fractured shoulder, isn't it?

25 A. Yes.

1 Q. And you ultimately also were diagnosed  
2 with a collar bone injury, correct?

3 A. Yes.

4 Q. You also had a wrist injury?

5 A. Yes.

6 Q. You also suffered a knee injury?

7 A. Yes.

8 Q. All of these injuries may impact you the  
9 rest of your life, correct?

10 A. Yes.

11 Q. And some of those injuries continue to  
12 impact you today, don't they?

13 A. Yes.

14 Q. Going back to the questioning earlier  
15 about your witnesses and whether they -- whether you  
16 told them how you fell, your witnesses saw you fall,  
17 didn't they?

18 A. Yes, the ones behind me saw me fall.

19 Q. Right. So they didn't have to tell you  
20 they saw you fall?

21 A. Yes.

22 Q. So that's correct. They didn't have to  
23 tell you they saw you fall. They just rushed to  
24 your aid, correct?

25 A. Yes, because they said when you fell, you

1 hit so hard. It's like your body bounced.

2 Q. And that bounce could have caused you to  
3 be a little ways up further than when you originally  
4 fell, right?

5 A. Yes.

6 Q. All right. I'm going -- I'm going to take  
7 down Plaintiff's Exhibit Eight which shows you  
8 further up from where you actually fell.

9 MS. SPENCER: And Ms. Peterkin, I have no  
10 further questions for you.

11 MR. IPOCK: I don't have any questions.

12 MR. BAXTER: None here.

13 THE COURT REPORTER: Ms. Spencer, read and  
14 sign or waive?

15 MS. SPENCER: We'll waive.

16 THE COURT REPORTER: Okay. Mr. Ipock,  
17 regular turnaround?

18 MR. IPOCK: Yes, ma'am.

19 THE COURT REPORTER: Okay. Ms. Spencer,  
20 etran and regular turnaround?

21 MS. SPENCER: Regular turnaround is fine.

22 THE COURT REPORTER: Mr. Baxter, etran and  
23 regular turnaround?

24 MR. BAXTER: Yes.

25 (The deposition concluded at 12:24 p.m.)

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(The witness, after having been advised of her right to read and sign this transcript, waives that right.)

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CERTIFICATE OF REPORTER

I, Solange Ruiz-Urbe, Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 9th day of March, 2021 at Fort Mill, York County, South Carolina.



Solange Ruiz-Urbe  
My Commission expires  
February 2, 2027

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EXAMINATION

BY MR. IPOCK

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BY MR. BAXTER

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[loop - okay]

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign  
require rejection of the deposition in whole or in  
part.

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OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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Deposition of:  
**William D. Rippy**

*March 9, 2021*

In the Matter of:

**Peterkin, Priscilla Vs. Bummz Beach,  
LLC, Et Al**

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

PRISCILLA PETERKIN,  
Plaintiff,

vs.

CASE NO. 2020-CP-26-04430

BUMMZ BEACH, LLC, CITY OF  
MYRTLE BEACH, AND BUMMZ ON  
THE BEACH, INC., INDIVIDUALLY  
AND D/B/A BUMMZ ON THE BEACH  
CAFE,

Defendants.

VIDEOTELECONFERENCE

DEPOSITION OF: WILLIAM D. RIPPY

DATE: March 9, 2021

TIME: 10:07 a.m.

LOCATION: 2002 North Ocean Blvd.  
Myrtle Beach, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: SOLANGE RUIZ-URIBE, Court Reporter  
Via VTC

---

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF  
3 PRISCILLA PETERKIN:

4 THE DEYASKA SPENCER LAW FIRM  
5 BY: DEYASKA SPENCER  
6 VIA VIDEOTELECONFERENCE  
7 1556 Sunnyside Drive  
8 Columbia, SC 29204  
9 (803) 764-3639  
10 spencer@deyaskalaw.com

11 ATTORNEYS FOR THE DEFENDANT

12 BUMMZ BEACH, LLC, BUMMZ ON THE BEACH, INC.,  
13 INDIVIDUALLY AND D/B/A BUMMZ ON THE BEACH  
14 CAFE:

15 HAYNSWORTH SINKLER BOYD, P.A.  
16 BY: CHARLES E. IPOCK  
17 VIA VIDEOTELECONFERENCE  
18 135 S. Dargan Street, Suite 300  
19 Florence, SC 29506  
20 (843) 669-6002  
21 cipock@hsblawfirm.com

22 ATTORNEYS FOR THE DEFENDANT

23 CITY OF MYRTLE BEACH:  
24 RICHARDSON PLOWDEN & ROBINSON, P.A.  
25 BY: DOUGLAS C. BAXTER  
VIA VIDEOTELECONFERENCE  
2103 Farlow Street  
Myrtle Beach, SC 29577  
(843) 448-1008  
dbaxter@richardsonplowden.com

(INDEX AT REAR OF TRANSCRIPT)

1 WILLIAM D. RIPPY,  
2 after first being duly sworn, testified as follows:

3 EXAMINATION

4 BY MS. SPENCER:

5 Q. All right. So just to recap. I'm an  
6 attorney from the Columbia, South Carolina area and  
7 I serve injured persons across the Carolinas.  
8 Mr. Rippy, do you know why you're here today?

9 A. About an incident that happened on the  
10 sidewalk. That's all I know.

11 Q. Okay. Have you ever been deposed before?

12 A. Yes.

13 Q. So you're familiar with the process as it  
14 relates to a deposition?

15 A. Yes.

16 Q. All right. And you understand that we  
17 expect you to give truthful responses to all of my  
18 questions?

19 A. Yes, ma'am.

20 Q. Okay. Well, today again, just to quickly  
21 recap, this is a formal proceeding. It's merely  
22 being done in an informal setting. I'm here at my  
23 office in Columbia, South Carolina. As I understand  
24 that you're at the restaurant there in Myrtle Beach,  
25 South Carolina. And of course, Doug, Charlie, and

1 Solange, they are at their home offices and their  
2 offices, okay. While we're going through the  
3 questioning today, if I ask you something that  
4 you're unfamiliar with, please ask me to clarify the  
5 question and I'll be happy to do that, okay?

6 A. Okay.

7 Q. If you don't understand a question I  
8 can -- I can clarify it as well. If you would, I  
9 ask that you'd answer yes or no when you can.

10 A. Okay.

11 Q. Is that, okay?

12 A. That's fine.

13 Q. Can you hear me, do we have a delay?

14 A. Can you hear me?

15 Q. I can. I can. You may not at any point  
16 during the course of this deposition seek assistance  
17 from your attorney. You may not text your attorney  
18 or email him during the course of this deposition,  
19 okay?

20 A. Okay.

21 Q. Lastly, your attorney may at some point  
22 choose to object to a question that I've asked of  
23 you. Even though your attorney may object I do ask  
24 that you answer the question and your attorney --  
25 (inaudible) deal with that at a later proceeding.

1 THE COURT REPORTER: Pardon -- pardon the  
2 interruption, Ms. Spencer. I was getting some audio  
3 delay there and your audio kind of cut off during  
4 the question. And I can read back what I have, but  
5 there was stuff there I didn't get.

6 MS. SPENCER: Okay. Recap for me, let me  
7 know what you didn't get. I mean, really --

8 THE COURT REPORTER: Sure.

9 (Whereupon the Court Reporter read back the  
10 previous question.)

11 BY MS. SPENCER:

12 Q. I said that -- we'll -- and your attorney  
13 and I will deal with the objection at a later  
14 proceeding.

15 THE COURT REPORTER: Thank you.

16 BY MS. SPENCER:

17 Q. Okay. Let's -- let's actually turn to my  
18 questions, this morning.

19 Mr. Rippy, will you please state your  
20 full name for the record?

21 A. William Dennis Rippy, Junior.

22 Q. And Mr. Rippy, where do you work?

23 A. Bummz Beach Cafe.

24 Q. Okay. Prior to working for Bummz Beach  
25 Cafe, where did you work?

1 A. The After Deck Nightclub.

2 Q. How long did you work at the After Deck  
3 Nightclub?

4 A. For 12 years.

5 Q. And did you own the After Deck Nightclub?

6 A. I was a partner, yes.

7 Q. Okay. And why did you end your employment  
8 with After Deck?

9 A. It was sold.

10 Q. Okay. So once After Deck was sold, did  
11 you immediately go into your current occupation at  
12 Bummz Beach Cafe?

13 A. It took a couple of years, but yes, I  
14 started opening this.

15 Q. Okay. And do you own Bummz Beach Cafe?

16 A. I own the business, yes.

17 Q. Okay. And how long have you owned this  
18 business?

19 A. Since we opened October 18th, 1996.

20 Q. Wow. What a long, long, long length of  
21 business. That's excellent.

22 A. Thank you.

23 Q. I may have eaten there as a child because  
24 in '96, '97 that was our hotspot vacation area.  
25 Wonderful.

1 Do you have any formal business  
2 training that I should know about?

3 A. Such as?

4 Q. Do you have a degree in business?

5 A. I have a degree in clinical psychology.

6 Q. But you have no degree in business, per  
7 se?

8 A. No.

9 Q. You found yourself working as a business  
10 owner due to having been in nightclub ownership and  
11 now the restaurant industry; is that right?

12 A. Correct.

13 Q. Okay. What is the address of Bummz Beach  
14 Cafe?

15 A. 2002 North Ocean Boulevard, Myrtle Beach,  
16 South Carolina 29577.

17 Q. Thank you. What is the nature of that  
18 business?

19 A. We are a restaurant. Ocean front  
20 restaurant.

21 Q. Okay. Is your primary business the  
22 restaurant side of the business or is it more of a  
23 nightclub?

24 A. It is all the restaurant.

25 Q. All right. And is this the only business

1 that you own in the state of South Carolina?

2 A. I am a partner in another restaurant  
3 that's been opened about a year and a half.

4 Q. All right. What is the name of that  
5 restaurant?

6 A. 44 and King Southern Pub.

7 Q. And where is the 44 and King Southern Pub  
8 located?

9 A. On the corner of 44th Avenue and Kings  
10 Highway.

11 Q. And what is the primary nature of that  
12 business?

13 A. It's a restaurant.

14 Q. It also sounds like it's a pub?

15 A. It is. It serves beer.

16 Q. Okay. All right. So the -- let's talk  
17 for a second about the current business Bummz on the  
18 Beach Cafe. At its inception, what was the name of  
19 your business, Mr. Rippy?

20 A. Bummz on the Beach, Inc.

21 Q. Okay. And from there, did you have a  
22 different name that you used to advertise your  
23 business to the public?

24 A. Bummz Beach Cafe.

25 Q. Did you ever have a name Bummz Beach Cafe

1 and Bar for your business?

2 A. No.

3 Q. Okay. I want to show you, Mr.Rippy, what  
4 has been previously marked as Plaintiff's Exhibit  
5 One.

6 (Plaintiff's Exhibit No. 1, PHOTOGRAPH, was  
7 marked for identification.)

8 BY MS. SPENCER:

9 Q. Do you see my screen?

10 A. Yes.

11 Q. All right. Do you recognize the objects  
12 in this photo?

13 A. Yes.

14 Q. All right. Do you see a marquee in this  
15 photo?

16 A. Yes.

17 Q. Is that -- is that marquee associated with  
18 your business Bummz?

19 A. That is our sign, yes.

20 Q. All right. Would you please read the  
21 marquee for me?

22 A. Karaoke Wednesday and Saturday. The sign  
23 says Bummz Beach Cafe and Bar.

24 Q. Okay. So Bummz Beach Cafe and Bar is  
25 advertised on the marquee, correct?

1 A. Correct.

2 Q. All right. But -- but you're saying the  
3 business name is not Bummz Beach Cafe and Bar?

4 A. No. It's Bummz Beach Cafe.

5 Q. All right.

6 MS. SPENCER: At this time I want to  
7 publish Plaintiff's Exhibit One to the jury and  
8 anyone that might read this transcript.

9 BY MS. SPENCER:

10 Q. What time of day is it in the picture,  
11 Mr. Rippy?

12 A. In that picture, it's dark. That's all I  
13 could tell you.

14 Q. Okay. So you would say it's nighttime?

15 A. Yes.

16 Q. All right. Approximately how far is that  
17 marquee from the entryway of your business entrance?

18 A. About 50 feet.

19 Q. Okay. And the light post or lamp post  
20 that's adjacent to the marquee, are they within a  
21 close proximal distance?

22 A. Yes.

23 Q. Approximately how far away is the lamp  
24 post from your marquee?

25 A. Probably six or 7 feet.

1 Q. Okay. Would you say that the marquee and  
2 the lamp post are about parallel?

3 A. Close, yes.

4 Q. All right. And how many feet would you  
5 say that lamp post is from the front entrance of  
6 Bummz on the Beach?

7 A. About 50 feet.

8 Q. Okay. And other than the lamp post  
9 identified in Plaintiff's Exhibit One, are there any  
10 other lamp post near the front entrance of your  
11 restaurant?

12 A. If there is, it's on the other side of the  
13 alleyway I believe in a -- in the opposite  
14 direction.

15 Q. Okay. And other than that one lamp post,  
16 is there any additional lighting that you use to  
17 illuminate the front of your building?

18 A. The lighting on the building.

19 Q. When you say, lighting on the building, do  
20 you mean that it's literally on the -- the fixture  
21 is on the building?

22 A. Correct.

23 Q. Okay. So walking up to your restaurant,  
24 Bummz on the Beach Cafe, there is no lighting near  
25 the -- the pathway into the building?

1 A. There is lighting on the columns that lead  
2 into the entrance.

3 Q. Okay. So in addition to the lighting  
4 fixture on the building, there are lighted columns  
5 if you're walking into the restaurant?

6 A. Yes, ma'am.

7 Q. Okay. All right. So just going back a  
8 bit to the nature of the business, I realize you're  
9 a restaurant, does your restaurant sell any alcohol?

10 A. We sell beer and wine.

11 Q. And what percentage of your business would  
12 you say is the beer and wine sales?

13 A. 30-percent.

14 Q. All right. Do the patrons drink beer and  
15 wine on the premises?

16 A. Only on the premises.

17 Q. Okay. Where exactly on the premises do  
18 patrons eat and drink?

19 A. On the beach side outside and in the  
20 interior dining room.

21 Q. Okay. I'm going to show you, if it's  
22 okay, I'm going to stop sharing Plaintiff's Exhibit  
23 One, which I've asked to be entered into the record.

24 I want to share with you another  
25 image. This is Plaintiff's Exhibit Three. All

1 right. Do you recognize this layout, Mr. Rippy?

2 A. I don't see anything.

3 MS. SPENCER: Can we off the record for a  
4 second.

5 (A recess was taken.)

6 BY MS. SPENCER:

7 Q. All right. Do you see Plaintiff's Exhibit  
8 Three in front of you, Mr. Rippy?

9 A. Yes.

10 Q. Excellent. I'm going to rotate the view  
11 so that it -- so that it shows the entire bar  
12 seating area both inside the restaurant and on the  
13 beach access. Is this better for you?

14 A. I can see it, yes.

15 Q. Okay. Now, this layout, would you just  
16 describe the layout for me. I see two bars. Could  
17 you kind of tell us where each of those bars are  
18 located?

19 A. Tables one through 15, are on the interior  
20 dinning area. The bar that shows is along the wall  
21 as you enter the dining room. Seats 17 through 35  
22 are on the exterior on our decking. And the bar in  
23 that area is a portable bar that we use for outside  
24 bar service.

25 Q. Okay. Based on your current layout, this

1 indoor outdoor theme, would you say that the nature  
2 of your business involved the use of both the inside  
3 and the outside of the restaurants?

4 A. We use the beach side exterior and the  
5 interior of the dining room, yes.

6 Q. So the answer to my question is, yes, you  
7 are a restaurant that caters to indoor, outdoor --  
8 an indoor/outdoor feel?

9 A. Yes, on the beach side.

10 Q. Well, you've mentioned the beach access  
11 Plaintiff's Exhibit Three, exactly where would a  
12 patron arrive if you're looking at Plaintiff's  
13 Exhibit Three, how -- how do they access the beach  
14 side?

15 A. There is -- the restaurant is between two  
16 alleyways that have walkover areas to the beach and  
17 from the walkover area you can -- the City owns a  
18 piece of the -- there's a section of the beach front  
19 that we lease from the City to use and you can walk  
20 from the crossovers through that property onto our  
21 beach side area.

22 Q. Okay. And would you describe the portion  
23 of the walkways that are City owned, how -- how  
24 exactly do those walkways look?

25 A. They are fairly new because they were just

1 redone in the last couple of years. They're --  
2 they're -- one is manufactured lumber. I think the  
3 other one is partially manufactured lumber and  
4 treated lumber.

5 Q. Okay. So there are lumber walkways to  
6 access the business premises, what other access ways  
7 are there?

8 A. Through the interior of the building.

9 Q. All right. I'm going to stop sharing  
10 this.

11 MS. SPENCER: And I do want to enter for  
12 the record Plaintiff's Exhibit Three.

13 (Plaintiff's Exhibit No. 3, DIAGRAM, was  
14 marked for identification.)

15 BY MS. SPENCER:

16 Q. So how many total entrances and exits are  
17 there to the restaurant, Mr. Rippy?

18 A. There is one in the front of the building  
19 and one off of each alleyway, each side.

20 Q. Does that -- is that a total of three?

21 A. Yes.

22 Q. And at each of these entrances -- let's  
23 just deal with them one by one. The alleyway  
24 entrance that is on the left side of the building,  
25 describe the character of that walking path?

1           A.    It comes off the -- out the alleyway.  
2    It's about 8 feet, I believe in length, between palm  
3    trees and onto our deck.

4           Q.    And is that a concrete walkway or is that  
5    lumber as well?

6           A.    The walkway is lumber.  It attaches to the  
7    City's concrete alleyway.

8           Q.    Okay.  Let's describe the right side  
9    alleyway entrance, if you would?

10          A.    It is a paved alleyway and there is a  
11    wooden walkway similar to the one on the other side.

12          Q.    Is it also about 8-foot wide?

13          A.    Yes, ma'am.

14          Q.    Okay.  And lastly, describe the front  
15    entrance, the entrance that would be used for those  
16    who want to dine inside?

17          A.    There is a manufactured lumber decking  
18    that leads to our door.

19          Q.    And who installed that lumber decking that  
20    leads into the door?

21          A.    We did.

22          Q.    And when you say, we, Bummz Beach Cafe  
23    installed the lumber decking?

24          A.    Yes.

25          Q.    Does that lumber decking attach to

1 anything else?

2 A. It ends at the sidewalk.

3 Q. Okay.

4 MS. SPENCER: I want to publish  
5 Plaintiff's Exhibit Four at this time.

6 (Plaintiff's Exhibit No. 4, PHOTOGRAPH, was  
7 marked for identification.)

8 BY MS. SPENCER:

9 Q. Do you recognize this photograph,  
10 Mr. Rippy?

11 A. I don't see a photograph. I see a list.

12 Q. Okay. Okay. You should see a photograph  
13 now, do you?

14 A. I still see just a list.

15 MR. BAXTER: Sometimes it's easier to exit  
16 share screen and then go back in and then click on  
17 the picture when it's open.

18 MS. SPENCER: Is that what happened there,  
19 Doug? Okay. Let's just --

20 MR. BAXTER: If you share screen with that  
21 list. There's probably a better way, but that's the  
22 simplest way I've figured out.

23 MS. SPENCER: Okay. I'm so glad you  
24 figured this out, Doug. Okay. So I'm going to --  
25 I'm going to stop the entire share and let's go back

1 in and let's make sure that we get the photo. All  
2 right.

3 MR. IPOCK: I'm looking at what you sent  
4 over as Four, is that -- this photo doesn't look  
5 familiar. Was that produced by y'all?

6 MS. SPENCER: I didn't produce it. The  
7 City produced this photo.

8 MR. IPOCK: Okay.

9 MS. SPENCER: So this was in the City's  
10 production and I really liked it. So I'm using it.  
11 So can you guys all see Plaintiff's Exhibit Four  
12 now?

13 THE WITNESS: I can see it.

14 MS. SPENCER: Yeah, I see now we're back  
15 in the correct order. All right. Let's go back on.  
16 Charlie, did you have any other questions?

17 MR. IPOCK: No, ma'am, that's good.

18 BY MS. SPENCER:

19 Q. Okay. We'll proceed. Thank you for your  
20 patience.

21 So Mr. Rippy, I'm showing you what's  
22 been previously marked as Plaintiff's Exhibit Four.  
23 Do you recognize this photo?

24 A. That's the sidewalk in front of our  
25 building, yes.

1 Q. Would you describe this as the front  
2 entrance to your building?

3 A. Yes.

4 Q. Okay. And this photograph of the front  
5 entrance to your building, will it aid you in your  
6 testimony today?

7 A. I guess. I don't know.

8 Q. Let's hope so. I think it will.

9 MS. SPENCER: I do want to, for the record  
10 enter as Plaintiff's Exhibit Four and publish it.

11 BY MS. SPENCER:

12 Q. The gray boards in this photograph, are  
13 those the lumber boards that you said were  
14 manufactured and installed by your business?

15 A. Yes, ma'am, that's it.

16 Q. And in front of those boards there's a  
17 gravel feature there, who installed that?

18 A. That is the sidewalk that was installed by  
19 the City.

20 Q. And I see a diamond pattern walkway, is  
21 that diamond pattern concrete walkway, was that  
22 installed by the City as well?

23 A. Yes, that was -- the deck or the walk that  
24 was installed by the City Myrtle Beach, I believe.

25 Q. Okay. Just looking at the decorative

1 feature in the concrete walkway, you said, there are  
2 lines throughout the entire sidewalk area?

3 A. Yes, there are.

4 Q. And those lines some are flat, correct?

5 A. Yes.

6 Q. But do you see any of the lines in the  
7 photo as jagged?

8 A. Yes.

9 Q. Okay. Would you -- would you just  
10 describe for me the jagged edge that you see on the  
11 screen?

12 A. It looks like a small crack.

13 Q. Okay. So the cracked portion of the  
14 sidewalk is not a part of the diamond pattern  
15 feature of the sidewalk, correct?

16 A. It doesn't look like it.

17 Q. Is that a no?

18 A. No.

19 Q. So if someone were walking on the sidewalk  
20 that has these lines in it, do you think they could  
21 mistake a line with the cracked portion of the  
22 sidewalk?

23 MR. BAXTER: Objection to form.

24 BY MS. SPENCER:

25 Q. You can still answer, Mr. Rippy. I'm just

1 going to clean that up. The question is: Could the  
2 lines in the sidewalk distract someone from the --  
3 the cracked portion?

4 A. I -- not -- I can't say from this photo if  
5 that would be the case.

6 Q. I'll move on. Mr. Rippy, the photograph  
7 in front of you, Plaintiff's Exhibit Four, what time  
8 of day is it in this photo?

9 A. It's daylight.

10 Q. Okay. And the incident that brings us  
11 here today occurred at night. Are you aware of  
12 that?

13 A. I'm not aware of what time it occurred.

14 Q. Well, it occurred closer to midnight. So  
15 you earlier testified the lamp post is approximately  
16 50 feet away from this front entrance, correct?

17 A. Yes.

18 Q. Okay. Do you see in this photograph a  
19 bush that is overgrown?

20 A. That is a Palm tree or a Palm bush.

21 Q. I -- I tell you, I don't know anything  
22 about plants. When I get anything green they die.  
23 So I appreciate you clarifying. So you do see a  
24 Palm tree bush in this photograph?

25 A. Yes.

1 Q. Okay. That Palm tree bush appears to be  
2 overgrown into the sidewalk, doesn't it?

3 MR. IPOCK: Objection.

4 BY MS. SPENCER:

5 Q. Please answer my question, Mr. Rippy?

6 A. It -- it hangs into the sidewalk.

7 BY MS. SPENCER:

8 Q. So yes, it appears to be overhanging onto  
9 the sidewalk?

10 A. It overhangs, yeah.

11 Q. Okay. Whose job is it to maintain that  
12 particular Palm tree bush?

13 A. We do.

14 Q. And is it your responsibility to maintain  
15 all of the vegetation around the Bummz Beach Cafe?

16 A. The vegetation that is on our lot, yes.

17 Q. Who does the maintenance for you?

18 A. We do.

19 Q. Is there someone on your staff that takes  
20 care of the vegetation?

21 A. Various members of the staff.

22 Q. Will you give me their names?

23 A. Currently, it would be myself, Leyland  
24 Wright, Dave Buffa.

25 Q. Is there a protocol for when you all

1 should trim the Palm tree bushes?

2 A. It is done continuously year round.

3 Q. All right. Going back to the crack in the  
4 sidewalk, have you had any other instances of people  
5 tripping in or near the front entrance of your  
6 restaurant?

7 A. No, ma'am. No, ma'am.

8 Q. Would you describe the crack in the  
9 sidewalk as a serious impediment to someone who is  
10 walking?

11 MR. BAXTER: Objection to form.

12 BY MS. SPENCER:

13 Q. Mr. Rippy?

14 A. I can't tell from the photo, no.

15 Q. Okay. I would like to share with you a  
16 closer image of the photograph. So that perhaps you  
17 might be able to see the seriousness of the crack in  
18 the sidewalk.

19 MS. SPENCER: I'm going to take Doug's  
20 advice and stop the share. And then I'm going to  
21 re-share. All right. Do you see -- you don't.

22 THE WITNESS: No, sorry.

23 MS. SPENCER: You do not?

24 THE COURT REPORTER: Ms. Spencer, may I  
25 suggest, so if you open the photograph first on your

1 computer, and then you share, usually there will be  
2 like a pop-up and then you highlight the photo you  
3 want to share.

4 MS. SPENCER: Excellent.

5 BY MS. SPENCER:

6 Q. All right. So Mr. Rippy, with a little  
7 bit of technical difficulty, I've gotten you an  
8 image of the photograph that's much closer. Are you  
9 better able to see the crack using this image?

10 A. I see it.

11 Q. Okay. Could you please describe the crack  
12 in the sidewalk for me?

13 A. It is a jagged crack.

14 Q. I'm sorry, could you repeat that?

15 A. It looks like a jagged crack.

16 Q. Okay. The crack in the sidewalk, do you  
17 think it can cause someone to suffer a fall?

18 A. It appears to be a crack. I don't see it  
19 displaced any in the photograph.

20 Q. What do you mean by you don't see it  
21 displaced?

22 A. Like, there's -- the sidewalk isn't  
23 deformed other than the crack.

24 Q. But this, the image in front of you is a  
25 closer image of the same location that I showed you

1 in the previous photo, correct?

2 A. Yes.

3 Q. All right.

4 MS. SPENCER: I'm going to enter  
5 Plaintiff's Exhibit Five for demonstrative purposes.

6 (Plaintiff's Exhibit No. 5, PHOTOGRAPH, was  
7 marked for identification.)

8 BY MS. SPENCER:

9 Q. All right. Mr. Rippy, the crack in the  
10 sidewalk, does it at all seem to you to be a newer  
11 crack in the sidewalk?

12 MR. IPOCK: Objection to the form.

13 THE WITNESS: I couldn't tell.

14 BY MS. SPENCER:

15 Q. Does it appear that the crack is new or  
16 does it appear to be old?

17 MR. IPOCK: Object to the form.

18 THE WITNESS: I -- I couldn't give you an  
19 opinion. I don't know. It's a crack.

20 BY MS. SPENCER:

21 Q. Okay. Who keeps the entrances and exits  
22 clean?

23 A. As far as our property?

24 Q. You earlier testified there are three  
25 entrances and exits to Bummz on the Beach Cafe, who

1 keeps --

2 A. We -- we maintain those.

3 Q. Okay. At any point did anyone that  
4 maintains the front of your business premises  
5 mention to you there was a crack in the sidewalk?

6 A. No.

7 Q. Do you see in Plaintiff's Exhibit Five any  
8 portion of the bush, the Palm tree bush that we  
9 discussed earlier?

10 A. I see a small piece of the Palms, yes.

11 Q. Is that a yes?

12 A. Yes.

13 Q. So that Palm tree bush is maintained by  
14 people on your staff, correct?

15 A. Yes.

16 Q. All right.

17 MS. SPENCER: I'm going to stop sharing  
18 Plaintiff's Exhibit Five, which I requested that it  
19 be entered into the record.

20 Mr. Rippy, I'm going to just review my  
21 questions to see if I've covered everything. Give  
22 me just one moment.

23 BY MS. SPENCER:

24 Q. I do have a question. Has the sidewalk  
25 been repaired, Mr. Rippy?

1 A. Not in any recent time I'm aware of.

2 MR. SPENCER: All right. I don't have any  
3 further questions.

4 MR. BAXTER: No questions.

5 MR. IPOCK: I've got a couple of  
6 follow-ups.

7 EXAMINATION

8 BY MR. IPOCK:

9 Q. Bill, good morning, Charlie Ipock here. A  
10 couple of questions. I try to be chronological when  
11 I ask questions, but I'll have to bounce around a  
12 little bit.

13 I just wanted to clarify a couple of  
14 points. One is, where the -- are patrons of your  
15 business allowed to take beverages out of your  
16 business onto the sidewalk?

17 A. No, they're not.

18 Q. Do you serve alcohol on the sidewalk?

19 A. We do not.

20 Q. You were asked a series the questions  
21 about the -- the -- I think the word was the  
22 seriousness of the condition as described on the  
23 sidewalk. Does Bummz, your restaurant, does it  
24 maintain the sidewalk?

25 A. We do not.

1 Q. Does it own the sidewalk?

2 A. We do not.

3 Q. Have you -- has there ever been a  
4 circumstance where you have made repairs to the  
5 sidewalk?

6 A. No.

7 Q. Have you ever observed repairs being made  
8 to the sidewalk, and if so, was that done by the  
9 City of Myrtle Beach?

10 A. Yes, the City has done a couple of things  
11 at the alleyway side of the sidewalk. Not that  
12 portion.

13 Q. To your understanding, is it the City's  
14 responsibility to maintain the sidewalk?

15 A. Yes.

16 Q. So when you were asked questions about  
17 maintaining entrances, this sidewalk is not an  
18 entrance that you control, maintain, or own,  
19 correct?

20 A. It's mainly a public sidewalk and we do  
21 not maintain it.

22 Q. So when you were talking about maintaining  
23 an entrance that would be like those wood pilings  
24 that we discussed and things that are actually on  
25 the space that you lease, correct?

1 A. Correct.

2 Q. And so I just mentioned word lease, you  
3 don't own any property out there, you don't own the  
4 dirt, you simply are a lessee; is that correct?

5 A. Yes.

6 Q. And in your lease, do you lease any  
7 sidewalks?

8 A. No.

9 MR. IPOCK: That's all I have. I  
10 appreciate it. Anyone got any follow-up?

11 THE COURT REPORTER: Charlie, is your  
12 witness going to read and sign or waive?

13 MR. IPOCK: He'll waive.

14 THE COURT REPORTER: Ms. Spencer, regular  
15 turnaround?

16 MS. SPENCER: Yes, that's fine.

17 THE COURT REPORTER: Okay. Also, we only  
18 marked Exhibits 1, 3, 4 and 5 for this deposition.

19 Mr. Ipock, etran and PDF of Exhibits?

20 MR. IPOCK: Yes.

21 THE COURT REPORTER: Okay. Mr. Baxter,  
22 etran and PDF of Exhibits?

23 MR. BAXTER: Yes.

24 (The deposition concluded at 10:51 a.m.)

25 (The witness, after having been advised of

1 his right to read and sign this transcript, waives  
2 that right.)  
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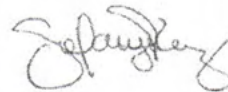
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CERTIFICATE OF REPORTER

I, Solange Ruiz-Urbe, Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 9th day of March, 2021 at Fort Mill, York County, South Carolina.



Solange Ruiz-Urbe  
My Commission expires  
February 2, 2027

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WITNESS EXAMINATION

WILLIAM D. RIPPY

3 1

EXAMINATION

BY MS. SPENCER

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EXAMINATION

BY MR. IPOCK

27 7

CERTIFICATE OF REPORTER

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**SOUTH CAROLINA**  
**COUNTY OF HORRY**

**IN THE COURT OF COMMON PLEAS**  
**CIVIL ACTION NO. 2020-CP-26-04430**

Priscilla Peterkin,  
Plaintiff,

-v-

Bummz Beach, LLC, City of Myrtle  
Beach, and Bummz on the Beach, Inc.,  
individually and d/b/a Bummz on the  
Beach Café,

Defendant(s).

**NOTICE OF MOTION AND MOTION  
TO RECONSIDER THE COURT'S  
RULING GRANTING SUMMARY  
JUDGMENT TO THE DEFENDANT  
BUMMZ ON THE BEACH, INC.,  
INDIVIDUALLY AND D/B/A BUMMZ  
ON THE BEACH CAFÉ**

**TO: THE HONORABLE STEVEN H. JOHN, DEFENDANT BUMMZ ON THE BEACH,  
INC., INDIVIDUALLY AND D/B/A/ BUMMZ ON THE BEACH CAFÉ AND ITS'  
ATTORNEYS:**

The Plaintiff hereby moves this Court pursuant to Rule 59 (e) of the SCRCPP requesting that the Court reconsider its' ruling granting Defendant Bummz on the Beach, Inc. d/b/a Bummz on the Beach Café's (hereinafter referred to as, "Defendant Bummz") Motion for Summary Judgment. The Plaintiff asks this Court to reconsider its ruling as to Defendant Bummz because the Plaintiff's affidavit was not a "sham" affidavit and even if it were, the affidavits of Antisha Peterkin and Calian Tate together with the Deposition of William D. Rippy and other relevant information provide enough evidence to deny Defendant Bummz' Motion for Summary Judgment without any consideration of the Plaintiff's affidavit.

Under the law, “in distinguishing between a sham affidavit and a correcting or clarifying affidavit, the following considerations provide guidance: (1) whether an explanation is offered for the statements that contradict prior sworn statements; (2) the importance to the litigation of the fact about which there is a contradiction; (3) whether the nonmovant had access to this fact prior to the previous sworn testimony; (4) the frequency and degree of variation between statements in the previous sworn testimony and statements made in the later affidavit concerning this fact; (5) whether the previous sworn testimony indicates the witness was confused at the time; (6) when, in relation to summary judgment, the second affidavit is submitted.” **Cothran v. Brown, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004)**

In the matter before us the Court placed great weight on the timing of when the Plaintiff’s affidavit was completed and submitted to the court. In Brown, the Court makes clear that the timing of the submission of a second affidavit is wholly relevant in determining whether an affidavit is a “sham affidavit.” Here, the Plaintiff’s affidavit (second to her Deposition) was submitted to clear up previous problems Plaintiff’s counsel had with the court reporter and court reporting agency. On May 24, 2021 the Plaintiff became aware of an error in Deponent William D. Rippy’s transcript just two weeks before the Motion for Summary Judgment hearing. The Plaintiff, through her counsel, contacted the Defense counsel and the reporting agency to work on correcting the misspelling in the Deponent’s name. On June 1, 2021 the Plaintiff received a replacement transcript from the reporting agency which resolved the misspelling but had a new glaring error; the revised transcript indicated the deposition had been taken by the Defense attorney and not by Plaintiff’s counsel. Again, Plaintiffs’ counsel

immediately notified defense counsel of the error and the concern. The matter concerned Plaintiff's counsel so much so that Plaintiff's counsel requested that the deponent, William D. Rippy, appear at the June 7, 2021 hearing to authenticate his prior deposition testimony. As an alternative, Plaintiff's counsel asked that Defense counsel have William D. Rippy complete an Affidavit to cure the issues with his transcript. Plaintiff's counsel's concerns are noted in several email. In the email to Defense counsel, Plaintiff's counsel clearly states that the request was being made to avoid evidentiary issues as a result of the court reporter and/or reporting agency errors. See Exhibit 1 attached. The third issue with the reporting agency arose on June 2, 2021 when the third replacement transcript of William D. Rippy lacked the court reporter's verification and appeared to be three pages shorter than previous transcripts. See Exhibit 2 attached. In order to cure any issues with William D. Rippy's deposition transcript, in lieu of an Affidavit, Defense counsel agreed to file a verification with the Court thereby authenticating William D. Rippy's transcript, and such verification was filed. Given the issues with the William D. Rippy transcript, and because the same reporter and the same reporting agency who handled the William D. Rippy transcript completed and handled the Priscilla Peterkin deposition transcript, Plaintiff's counsel believed an Affidavit was the only prudent option available to the Plaintiff in order to clarify and/or correct any potential errors that may arise in her deposition transcript. It was later found that there was an error in the Peterkin transcript which was discovered and corrected on June 9, 2021, one day after the hearing in the instant matter. See Exhibit 3 attached. Given the issues with the court reporter and the court reporting agency as well as the multiple replacement transcripts, the timing of the submission of

the Priscilla Peterkin Affidavit demonstrates that the Plaintiff, through her counsel, was attempting to avoid a sham, and not create one.

Secondly, the Brown court held that whether “an explanation is offered for the statements that contradict prior sworn statements” is relevant in evaluating whether an affidavit is a sham. Here, the Plaintiff presents to this Court that there was, and is no contradiction between her deposition testimony and subsequent affidavit. In fact, the deposition and the affidavit discuss two separate issues. Mr. Ipock, the defense attorney, will have the Court believe that the Plaintiff blames her fall on the palm bush tree. However, nothing could be further from the truth. In fact, the Plaintiff maintains that she tripped and fell on a crack in the sidewalk throughout her deposition. The Plaintiff does not in her deposition or in her Affidavit state the palm bush tree “caused” her to fall. The Defense attorney, Mr. Ipock, drew the Court’s attention to Priscilla Peterkin’s transcript testimony on page 35 as evidence of a contradicting statement. It is on page 35 that he asks Ms. Peterkin the question, “Just so I understand that, is that a no it did not cause --.” First, Mr. Ipock’s question is incomplete. Secondly, one can only surmise that Mr. Ipock, the defense attorney, was asking the Plaintiff if the palm tree bush *caused* her to fall. If that is the case, he is asking a peculiar question as Ms. Peterkin never maintained the bush itself caused her to fall. In fact, in the sentence before Mr. Ipock poses this question she says, “I can’t say that it did.” Oppositely, in Plaintiff’s affidavit, she says she couldn’t see the crack due to it being night time and due to the bush overhanging the sidewalk. These are two very different things to a lay person such as the Plaintiff. Whether the palm tree bush “caused” her fall is a “no,” to her in the literal sense because the palm tree bush did not cause her to fall. Hence, she

could not “say that it did.” On the other hand, whether the palm tree bush “caused” her to fall in the legal sense, could very well be a “yes.” However, that would be a question of fact for the jury to decide. Mr. Ipock then offers Ms. Peterkin’s Affidavit as a contradiction. This is again a misrepresentation to the Court. In her Affidavit, the Plaintiff states she “could not see” the crack due to the palm tree bush. Whether she could see the crack is a different question than whether the palm tree bush caused her to fall. There is no contradiction here.

Thirdly, the court in Brown believes the frequency and degree of variation between statements in the previous sworn testimony and statements made in the later affidavit concerning this fact are relevant. In the Plaintiff’s deposition she affirmatively states she was walking on the right side of the sidewalk closest to the palm bush tree (Peterkin Dep. 52.) when she tripped and fell. She goes on to confirm in her deposition testimony that Plaintiff’s Exhibit Four represents the exact place where she fell. (Peterkin Dep. 52). Plaintiff’s Exhibit Four is the same exhibit Antisha Peterkin and William D. Rippy both reviewed in forming their statements. In William D. Rippy’s deposition, owner of Bummz restaurant, he states, “the palm bush tree is owned and maintained by Defendant Bummz (Rippy Dep. 22).” He then identifies the palm bush tree as overhanging the sidewalk. Ms. Peterkin’s response to Mr. Ipock on page 35 of her deposition transcript has been incorrectly interpreted by the Defense and misrepresented to this Court. It has been incorrectly interpreted because Mr. Ipock’s question, “Just so I understand that, is that a no it did not cause -- ” (Peterkin Dep. 35) was not a complete question. We cannot be exactly sure what question Mr. Ipock was trying to ask Ms. Peterkin since Ms. Peterkin had previously explained to Mr. Ipock that

she couldn't say the bush, without more, caused her to trip and fall. Mr. Ipock further confused the witness by asking this question, a causation question about whether the palm tree bush itself "caused" her to fall. Ms. Peterkin has never indicated that the palm bush tree itself "caused" her to fall; she has been clear that she tripped on a crack which caused her to fall. In the Plaintiff's Affidavit, she says, "Since it was both dark, and because a Bummz palm tree bush was overhanging the raised concrete I couldn't see the danger and I tripped." (Peterkin Affidavit Paragraph 10). Again, she is saying she tripped on the crack in the sidewalk; not the bush. And again, she reaffirms that the palm bush tree overhangs the sidewalk. Multiple witnesses have also confirmed that the palm bush tree overhangs the sidewalk. Therefore, the Plaintiff's affidavit is consistent with her prior deposition testimony.

Lastly, in evaluating whether an affidavit is a sham affidavit the Court in Brown says the analysis must consider whether the previous sworn testimony indicates the witness was confused at the time. Given the greater weight of the Plaintiff's testimony, it is clear that the Plaintiff was confused by the question presented by Mr. Ipock when she replied, "No." (Peterkin Dep. 35). She was confused by Mr. Ipock's question. She knew the crack caused her to trip and fall, and not the palm bush tree itself. While in law, lawyers distinguish between direct causation and proximate causation all the time; lay people like the Plaintiff cannot appreciate this distinction. The Plaintiff could not say the palm tree bush "caused" her to trip and fall in her deposition because she believed the crack "caused" her to fall. And her statement in her Affidavit that the palm tree bush overhung the sidewalk is a fact corroborated by multiple witnesses including the deponent, William D. Rippy, owner of Defendant Bummz. The issue of proximate cause

is one for a jury or a judge; not the Plaintiff. Mr. Ipock should not have asked the Plaintiff a confusing causation question without detailed instructions and certainly should not have used it as a basis for a baseless argument that the Plaintiff presented a “sham” affidavit.

Even if the Court believes a true conflict exists between the Plaintiff’s deposition testimony and her affidavit and chooses to disregard the Plaintiff’s affidavit; the Affidavits of Antisha Peterkin and Calian Tate as well as the Deposition of William D. Rippy provide more than enough evidence to support a denial of Defendant Bummz’ Motion for Summary Judgment.

The Deyaska Spencer Law Firm, LLC

*s/Deyaska Spencer*

Deyaska Spencer (SC Bar No.: 102107)

spencer@deyaskalaw.com

The Deyaska Spencer Law Firm

1556 Sunnyside Drive

P.O. Box 6763 (29260)

Columbia, SC 29204

Off: (803) 764-3639

Fax: (855) 416-6758

Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Priscilla Peterkin,

Plaintiff,

v.

Bummz Beach, LLC, City of Myrtle Beach, and Bummz on the Beach, Inc., Individually and d/b/a Bummz on the Beach Café,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-26-04430

**BUMMZ ON THE BEACH, INC.,  
INDIVIDUALLY AND D/B/A BUMMZ ON  
THE BEACH CAFÉ'S MEMO IN  
OPPOSITION TO PLAINTIFF PRISCILLA  
PETERKIN'S MOTION TO RECONSIDER**

Pursuant to Rule 59, SCRPC, Plaintiff Priscilla Peterkin (“Plaintiff”) has filed a Motion to Reconsider (“Motion”) the Court’s grant of summary judgment in favor of Bummz on the Beach, Inc., Individually and d/b/a Bummz on the Beach Café (“Defendant” or “Bummz”).<sup>1</sup> In her Motion, Plaintiff argues that she did not submit a sham affidavit to survive summary judgment and further argues that, even if the affidavit is excluded, the affidavits of Antisha Peterkin and Calian Tate and the deposition testimony of William D. Rippy constitute evidence sufficient to meet her burden in responding to the motion for summary judgment. As set forth below, the Court properly considered the Defendant’s motion for summary judgment and the Plaintiff’s response to it and the Motion should be denied.

**BACKGROUND**

This is a trip and fall case. As admitted in the Motion, Plaintiff “tripped and fell on a crack in the sidewalk.” (Motion at 4). The City of Myrtle Beach has admitted in its responses to Requests for Admission that it maintains the sidewalk where Plaintiff alleges she fell. It is not disputed that Defendant leases the restaurant adjacent to the sidewalk in question, and there is no

<sup>1</sup> As a technical matter, the motion was filed prior to the entry of the order.

dispute that Plaintiff was not a customer of Defendant and that Defendant's restaurant was closed at the time of the fall.

As to the specific mechanism of Plaintiff's fall, despite repeated questioning, Plaintiff has been unable to articulate why she fell other than noting a crack in the sidewalk and/or that the sidewalk was raised. In her deposition, she was asked the following:

Q: All right. Just one little quick follow-up. I'll throw this picture up here. All right. This is back to that picture we were looking at earlier. It's marked as Plaintiff's Exhibit Four, but I'll – I think it's Number 1 for our transcript purposes. Do you see on the right-hand side a palm bush or some other shrubbery. Do you see that on the right?

A: Uh-huh.

Q: Did that cause you to fall?

A: I can't say that it did.

Q: Just so I understand that, is that a no it did not cause –

A: No.

Contradicting this unqualified response in her sworn deposition given March 9, 2021, Plaintiff filed an affidavit on June 3, 2021, immediately prior to the hearing on the Defendant's motion for summary judgment, which states: "Since it was both dark, and because a Bummz palm tree bush was hanging over the raised concrete I couldn't see the danger and I tripped."

### **ARGUMENT**

Plaintiff argues that the Court has mischaracterized her affidavit as a sham affidavit and that it should be considered. She does not contest the law applied by the Court, and she cites the same case applied by the Court, *Cothran v. Brown*, 357 S.C. 210, 218, 592 S.E.2d 629, 633 (2004). (Motion at 2).

Instead, she contests the Court's application of the *Cothran* factors to the circumstances surrounding the affidavit. With respect to the *Cothran* analysis, Plaintiff was required to make her arguments prior to filing her motion to reconsider. Rule 59(e) is not a proper mechanism for advancing new arguments. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

As an initial matter, the portions of the Motion on pages 2-3 relating to court reporting are unavailing because Plaintiff does not contend the deposition testimony at issue was erroneous, nor does the portion of the affidavit at issue relate to court reporting. The Motion references correcting the spelling of deponent's name and the name of the deposing counsel and adding the court reporter's verification for the deposition of William Rippy (the owner of Bummz) and two corrections made by the court reporter to the Plaintiff's deposition. These corrections are recounted in the attached affidavits of Solange Ruiz-Urbe, which verify that no further errors were found in either transcript. (Attached as **Exhibit 1**). As set forth by Ms. Ruiz-Urbe with respect to the Plaintiff's deposition,

I, Solange Ruiz-Urbe, Court Reporter do hereby swear under oath that the following changes should be made to the March 9, 2021 transcript of Patricia Peterkin:

1. Page 25, Line 17 from: "earlobe down to" should be: "earlobe going down to".
2. Page 57, Line 3 from: "than when you" should be "than where you".

No further errors were found in the transcript.

Plaintiff's affidavit makes no mention of any court reporting concerns, and the portion of the deposition at issue was unchanged and has been verified by the court reporter. As such, these arguments have no bearing on the Court's ruling and fail under the "overriding rule of civil

procedure which says: whatever doesn't make any difference, doesn't matter." *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987).

With respect to the Plaintiff's argument that there is no contradiction, the argument is directly refuted by the language quoted above from the deposition and the affidavit. The question is direct and asked without objection, and the contradiction in the pre-hearing affidavit is clear. Plaintiff's argument attempts to twist these facially inconsistent statements into something other than what Plaintiff testified in her deposition and signed in her affidavit.

Further, with respect to the "frequency and degree of variation" as argued on page 5 of the Motion, the layout of the area in question is not in dispute. Defendant agrees that there is a palm bush. Yes, the testimony on these points has been consistent. The testimony with respect to causation, on the other hand, has not. Plaintiff reversed her position between the time of her deposition and her affidavit in response to Defendant's motion for summary judgment. It is that testimony that was dispositive in the Court's ruling.

Lastly, Plaintiff's lawyer now attempts to create an argument relating to confusion. This argument does not create a factual issue. *S.C. Dep't of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003) ("Arguments made by counsel are not evidence."). The deposition questions and the affidavit testimony are clear. There is not any facial indication of confusion. Nor does the Plaintiff state in her affidavit that she was confused. This is a new argument raised by counsel at the Rule 59 phase. As such, it is improper and the Court correctly found in its order that "no confusion is alleged by the Plaintiff."

Plaintiff further argues that the affidavits of Antisha Peterkin and Calian Tate and the deposition of William D. Rippy create "enough evidence" to defeat summary judgment. No argument, analysis, facts, or law are provided to the Court to support this statement.

The elements of Plaintiff's claim against Defendant are not in question: "To recover damages for injuries caused by a dangerous or defective condition on a storekeeper's premises, the plaintiff must show either (1) that the injury was caused by a specific act of the respondent which created the dangerous condition; or (2) that the respondent had actual or constructive knowledge of the dangerous condition and failed to remedy it." *Garvin v. Bi-Lo, Inc.*, 343 S.C. 625, 628, 541 S.E.2d 831, 832 (2001). Here, Plaintiff has failed to present evidence on these two points, and specifically the threshold issue of any specific act on the part of the Defendant that caused Plaintiff's injury.

Antisha Peterkin's affidavit makes no mention of Bummz, nor does it reference any vegetation. Similarly, Calian Tate's affidavit says only "[s]he fell hard when she tripped on a crack in the sidewalk in front of Bummz" and does not reference any vegetation. The deposition of William R. Rippy includes a description of the area, but no testimony as to a specific act on the part of Bummz that may have injured Plaintiff. South Carolina is not a *res ipsa* state. *See Nguyen v. Uniflex Corp.*, 312 S.C. 417, 420, 440 S.E.2d 887, 889 (Ct. App. 1994). The fact that Plaintiff fell is not enough. In responding to Defendant's properly made and supported motion for summary judgment, Plaintiff bears the burden of showing a genuine issue of material fact linking her damages to some conduct by Defendant. *See* Rule 56(e), SCRPC; *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 580, 602 S.E.2d 389, 392 (2004). She has not done so.

### **CONCLUSION**

The Court properly exercised its discretion in applying the *Cothran* factors and excluding the Plaintiff's affidavit. In addition, the Court was correct in granting Defendant's motion for summary judgment. There has been no evidence presented that would show a genuine issue of material fact for trial as to Defendant. For all of these reasons, the Motion should be denied.

Respectfully submitted,

**HAYNSWORTH SINKLER BOYD, P.A.**

*/s/ Charles E. Ipock*

---

Roopal S. Ruparelia (SC Bar No. 16003)  
1201 Main Street, 22<sup>nd</sup> Floor  
Post Office Box 11889 (29211-1889)  
Columbia, South Carolina 29201  
(803) 779.3080 - telephone  
(803) 765.1243 - fax  
rruparelia@hsblawfirm.com

Charles Epps Ipock (SC Bar No. 101258)  
135 S. Dargan Street, Suite 300  
Florence, South Carolina 29506  
(843) 669.6002 - telephone  
(843) 669.3815 - fax  
cipock@hsblawfirm.com

June 24, 2021  
Columbia, South Carolina

*Attorneys for Defendant Bummz on the Beach  
Inc. d/b/a Bummz on the Beach Café*

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Priscilla Peterkin,

Plaintiff,

v.

Bummz Beach, LLC, City of Myrtle  
Beach, and Bummz on the Beach, Inc.,  
Individually and d/b/a Bummz on the  
Beach Café,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2020-CP-26-04430

# GENERAL AFFIDAVIT

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State of State Carolina  
County Horry

I, Solange Ruiz-Urbe, Court Reporter do hereby swear under oath that the following changes should be made to the March 9, 2021 transcript of William D. Rippy:

1. Page 1, Line 16 Counsel for the Defendant should be changed to Counsel for Plaintiff.
2. All instances of Rippi should be changed to Rippy.

No further errors were found in the transcript.

Under penalty of perjury, I hereby declare and affirm that the above stated facts, to the best of my knowledge, are true and correct.

DATED this 1st Day of June, 2021.



\_\_\_\_\_  
Signature

Solange Ruiz-Urbe  
\_\_\_\_\_  
Printed Name

# GENERAL AFFIDAVIT

---

State of State Carolina  
County Horry

I, Solange Ruiz-Urbe, Court Reporter do hereby swear under oath that the following changes should be made to the March 9, 2021 transcript of Patricia Peterkin:

1. Page 25, Line 17 from: "earlobe down to" should be: "earlobe going down to".
2. Page 57, Line 3 from: "than when you" should be "than where you".

No further errors were found in the transcript.

Under penalty of perjury, I hereby declare and affirm that the above stated facts, to the best of my knowledge, are true and correct.

DATED this 9th Day of June, 2021.



---

Signature

Solange Ruiz-Urbe

---

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

-----x

PRISCILLA PETERKIN, )

Plaintiff, )

vs. )

BUMMZ BEACH, LLC, )

Defendant. )

Transcript of Record  
2020-CP-26-04430

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June 8, 2021

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

B E F O R E:

The Honorable Steven John, Presiding Judge

A P P E A R A N C E S:

Deyaska Spencer, Esq.  
Attorney for the Plaintiff

Charles Ipock, Esq.  
Attorney for the Defendant

Court Reporter: Bobbi Fisher, RPR

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E X H I B I T S

None.

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	(DCRP only) Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceedings started at 3:15 p.m.)

THE COURT: The next one I see is Bummz on the Beach, Inc., individually. Let's see, Priscilla Peterkin vs. Bummz on the Beach, LLC.

All right. Counsel, do you want to come forward? State your name for the record and the party you represent, please.

MR. IPOCK: Judge, forgive me, I am Bummz on the Beach. I'm their counsel, Charles Ipock with Haynsworth, Sinkler, Boyd. And this is our motion for summary judgment.

THE COURT: All right. And on the other side, ma'am?

MS. SPENCER: Good afternoon, Your Honor. My name is Deyaska Spencer. I represent the plaintiff, Ms. Priscilla Peterkin. I do have a housekeeping matter I'd like to bring to the Court's attention.

THE COURT: Sure.

MS. SPENCER: Your clerk of court's office is really wonderful, by the way. In order to accommodate the request of numerical exhibits, we uploaded our 23 exhibits, not 971 like some other people, in three separate uploads. So you may have a little bit of difficulty finding them. We do have hard copies of everything if Your Honor would like.

THE COURT: If you just kind of tell me what it is that you're referring to, then I can look in the clerk's electronic file and find it. It just might take me a little bit of time

1 to do that.

2 MS. SPENCER: Thank you, Judge.

3 THE COURT: All right. Mr. Ipock, it's your motion. Be  
4 glad to hear from you.

5 MOTION FOR SUMMARY JUDGMENT

6 MR. IPOCK: Thank you. Again, Judge, Charles Ipock,  
7 Bummz on the Beach, d/b/a Bummz on the Beach Cafe. Judge, my  
8 client is an oceanfront property downtown on the beach here at  
9 Myrtle Beach and is moving for summary judgment purely because  
10 there's just simply not a genuine issue of material fact.

11 High-level 30,000-foot view here, Judge: In 2018,  
12 Plaintiff, who was out of state, came to the beach, took a  
13 stroll downtown. At about 11ish p.m. with family, turned  
14 around, crossed Ocean Boulevard, and started heading back  
15 toward her hotel. So she's walking down the sidewalk in  
16 downtown and falls.

17 On the side adjacent to where she falls -- she's on the  
18 sidewalk -- is my client's restaurant. She's not a customer  
19 there. She's not a patron there. She has nothing to do  
20 whatsoever with my client's restaurant. In fact, my client's  
21 restaurant is closed because it's midnight about when she  
22 fell.

23 So the plaintiff has sued my client who fell on the  
24 sidewalk and is suing the adjacent landowner, who is my  
25 client. My client also does not own the dirt. He rents the

1 building and the restaurant there.

2 So, again, high-level here: My client and adjoining land  
3 lessee have been sued for a premises liability matter where  
4 Mrs. Peterkin fell on the sidewalk. If you grant our motion,  
5 Judge, you're not closing the doors to the courthouse. The  
6 City of Myrtle Beach is a defendant in this case and they're  
7 actively engaged in this case.

8 Judge, also importantly, despite repeatedly being asked  
9 in her deposition: What did you fall on? How did you fall?  
10 Doesn't know. Just simply doesn't know, Judge, as to her  
11 falling on the sidewalk.

12 So, Judge, what's the law? As you know, premises  
13 liability, to recover damages for injuries caused by a  
14 defective or dangerous condition on a storekeeper's premises  
15 -- again, client doesn't own the dirt. Let's say the  
16 storekeeper's premises, the plaintiff must show, one, that the  
17 injury was caused by a specific act of the defendant which  
18 created the dangerous condition. Well, Plaintiff doesn't know  
19 what caused her to fall.

20 Two, that the Respondent had actual or constructive  
21 knowledge of the dangerous condition and failed to remedy it.  
22 Again, Judge, Plaintiff can't articulate what caused her to  
23 fall.

24 In addition to all of this, Judge, requests to admit were  
25 sent out to the City of Myrtle Beach, and they readily admit

1 the City of Myrtle Beach maintains the sidewalks that are  
2 within the right-of-way of North Ocean Boulevard, and it  
3 readily admits that's where she fell.

4 Judge, this is just simply not a case where my client had  
5 any sort of duty, not subjecting my client to liability under  
6 the law.

7 One item of note, Judge, as Plaintiff's counsel  
8 mentioned, numerous things were filed in opposition to this,  
9 one of which was an affidavit of Plaintiff. Judge, I have a  
10 copy of her deposition here. I have highlighted, tabbed.  
11 What I'll reference to you, Judge -- may it please the Court?

12 THE COURT: Yes, sir.

13 MR. IPOCK: All right. Mr. Ipock, that's me. Question:  
14 "Just one little quick follow-up." This is on the tab, page  
15 35, Plaintiff's deposition. "This is back to the picture we  
16 were looking at earlier. It's marked as Plaintiff's Exhibit 4  
17 but it's No. 1 for our transcript purposes. Do you see on the  
18 right-hand side a palm bush or some other shrubbery? Do you  
19 see that on the right?"

20 "Uh-huh."

21 "Did that cause you to fall?"

22 Answer: "I can't say that it did."

23 "Just so that I understand, is that a no, it did not  
24 cause you to fall?"

25 "No."

1 THE COURT: Okay.

2 MR. IPOCK: So surely in an attempt --

3 THE COURT: You said something about an affidavit.

4 MR. IPOCK: Yes, sir, Judge. This is the affidavit that  
5 Plaintiff just filed in what could only be a classic case of a  
6 sham affidavit. Item 10, "Since it was both dark and because  
7 a Bummz palm tree bush was hanging over the raised concrete, I  
8 couldn't see the danger and I tripped." The polar opposite  
9 testimony that she spot-on was questioned about in her  
10 deposition, she changes. And why is she changing it, Judge?  
11 Now, her sham affidavit says, I'm walking down the sidewalk  
12 that's owned by City of Myrtle Beach. A palm tree over here,  
13 she's now saying in her affidavit, caused her to fall.

14 I asked her to make sure that we had clear testimony at  
15 this point, and now this affidavit has been filed. It's a  
16 sham affidavit, Judge. I have the case law right here. I  
17 have tabbed and highlighted it as well, and I'll provide a  
18 copy to Plaintiff's counsel, and I have a copy for you as  
19 well, Judge, if you'd like to see it.

20 Judge, I know you know this case well. There's various  
21 and sundry particulars noted as to what the sham affidavit  
22 will check the boxes on all. Judge, this is the kind of  
23 material fact right in this case. There's no expert saying  
24 what was defective. There's nothing in the record of showing  
25 anything was defective. In fact, Plaintiff again can't point

1 to anything being defective, and, Judge, we don't maintain the  
2 sidewalk anyway.

3         So this affidavit was set forth, but again, we're  
4 checking all the marks here. *Cothren vs. Brown* is looking at  
5 -- you know, they're asking the question -- I love the last  
6 one: "When, in relation to summary judgment, the affidavit is  
7 submitted." Again, it's -- right now, Judge, again, it  
8 appears for the sole purpose of trying to defeat summary  
9 judgment.

10         Again, to be clear, the courthouse doors are not going to  
11 be shut for Mrs. Peterkin. The City of Myrtle Beach is  
12 engaged, involved, so on and so forth, Judge. For these  
13 reasons, we'd ask you to grant us summary judgment in this  
14 matter.

15         THE COURT: All right.

16         All right, Ms. Spencer. Be glad to hear from you, ma'am.

17         MS. SPENCER: Thank you, Your Honor. Summary judgment is  
18 proper if viewing the evidence in the light most favorable to  
19 the nonmoving party, which is my client, Priscilla Peterkin.  
20 There's no genuine issue of material fact, and the moving  
21 party is entitled to judgment as a matter of law. And we also  
22 know in cases applying preponderance of the evidence, burden  
23 of proof, the nonmoving party is only required to submit a  
24 mere scintilla of evidence in order to withstand a motion for  
25 summary judgment. It is the party seeking summary judgment

1 who has the initial responsibility of demonstrating the  
2 absence of a genuine issue of material fact.

3 Summary judgment, if proper -- is proper if no genuine  
4 issue of material fact exists. Here, whether the overgrown  
5 palm tree bushes, which overhung the sidewalk, thereby leading  
6 to my client to trip-and-fall, that is indeed a question of  
7 fact.

8 Mr. Ipock pointed to Ms. Peterkin's deposition, and he  
9 indicated that she, in her deposition, was asked did the palm  
10 tree bush itself cause her to fall. She said, I can't say  
11 that it did but she also didn't say that it didn't.

12 The issue here, Your Honor -- and I just want to bring  
13 your attention to the memo that was filed. The plaintiff did,  
14 in her deposition, state that she fell when she was heading  
15 back to the hotel. That's on her deposition, page 14, line 11  
16 of her deposition. It's Exhibit 18.

17 She further testifies, "So we were walking back from my  
18 little walk, and right after I passed the entranceway of Bummz  
19 Beach where you can go into the door a few steps up, I just  
20 felt my right foot tip forward. So I thought I could break my  
21 fall if I put my hand down but it was just -- it happened too  
22 fast. You know, I fell so fast." That's in her deposition at  
23 page 15, lines 9 through 15.

24 And the affidavit which opposing counsel referenced, she  
25 states, "Most of my family members were behind me when I

1 tripped and fell, and they witnessed my fall." That's  
2 Peterkin affidavit paragraph 11.

3 So there were multiple witnesses who saw her  
4 trip-and-fall over the crack, the same crack where this palm  
5 tree bush overhung. Two of the witnesses, one of which is a  
6 lawyer, her daughter, Antisha Peterkin, the other, Calian  
7 Tate, both in their affidavits, identify the crack in the  
8 sidewalk which is exactly the place where the palm tree bush  
9 overhangs as the exact place with Ms. Peterkin tripped and  
10 fell.

11 Calian Tate is a friend of the family. The daughter is a  
12 lawyer. She clearly knows that testifying and giving an  
13 affidavit is, obviously, you know, it's an oath. She took an  
14 oath to give it. Both of these witness affidavits are  
15 attached hereto.

16 Antisha states in her affidavit, "My mom tripped and fell  
17 on a crack in the sidewalk, which is represented in  
18 Plaintiff's Exhibits 4, 5, and 6." So Antisha's affidavit is  
19 Exhibit 1. If the Court needs a copy, I'm happy to provide  
20 one.

21 THE COURT: All right. Hold on a second. Let me see if  
22 I can find it here.

23 All right. So this is the affidavit of Antisha Peterkin?

24 MS. SPENCER: That's correct, Your Honor.

25 THE COURT: All right. Where is it that you want to

1 point me to?

2 MS. SPENCER: All right. In Antisha Peterkin's  
3 affidavit, she identified --

4 THE COURT: Which paragraph? What's the number of the  
5 sentence and paragraph?

6 MS. SPENCER: It's paragraph 6, Your Honor.

7 THE COURT: 6. Okay. Great.

8 MS. SPENCER: Paragraph 6 says, "My mom tripped and fell  
9 on a crack in the sidewalk, which is represented in  
10 Plaintiff's Exhibits 4, 5, and 6."

11 If Your Honor looks at the attached exhibits that she  
12 referenced in her affidavit, Your Honor can see the crack,  
13 which is -- it's marked as Plaintiff's Exhibit 4; it was used  
14 in prior deposition testimony.

15 THE COURT: I see it.

16 MS. SPENCER: You can also see the crack in 5, with the  
17 bush overhanging it there, and you can see it in 6. So this  
18 young lady, who is certainly competent and was there  
19 testifying on -- she's testifying on her own personal  
20 knowledge that she saw her mom trip-and-fall on the crack  
21 where the palm tree bushes are.

22 She also in her affidavit, she says in paragraph 9, when  
23 her mom fell, she rolled from the place where she originally  
24 fell. There are additional photographs that are in other  
25 depositions that show Ms. Peterkin on the ground, being

1 attended to by EMS personnel. She is not at that point in the  
2 place where she fell. She rolled when she fell.

3 This affidavit of Antisha Peterkin -- also in paragraph  
4 15, she says that she went back to Myrtle Beach September  
5 2020, and the crack is still there. So this crack is in the  
6 sidewalk and that is exactly where she fell. Now, that's  
7 important, Your Honor, because the owner of Defendant Bummz  
8 gave a deposition, William D. Rippy, and he provided testimony  
9 in his deposition that the palm tree bushes are maintained by  
10 him. In Defendant William Rippy's deposition, when questioned  
11 about the palm tree bush overhanging the sidewalk, he says,  
12 "It overhangs, yeah." That's deposition page 22, line 10.

13 He goes on to say, "It hangs into the sidewalk." That,  
14 again, is William D. Rippy, owner of Bummz Beach. This is  
15 page 22, line 6 of his deposition.

16 When I asked him who maintains the palm tree bushes, he  
17 says, "We do." Again, that's deposition page 22, line 18.

18 In light of the above, Your Honor, there is a genuine  
19 issue of material fact that we believe only a trier of fact  
20 can resolve. The question is: Did Ms. Peterkin fail to see  
21 the crack because there was a palm tree bush there or how did  
22 the palm tree bush and the crack together -- we believe that  
23 the palm tree bush and the crack together likely may have  
24 caused Ms. Peterkin to suffer the fall resulting in injuries  
25 to her person.

1           Your Honor, I do have additional exhibits and testimony  
2 that I can go into, but the evidence presented shows that  
3 Ms. Peterkin, who is a resident of North Carolina, who is  
4 visiting Myrtle Beach, who left her hotel, she crossed over  
5 across the street, walked down on the opposite side of the  
6 road down to the Ferris wheel with her family and friends,  
7 with multiple people, and that they managed to make it from  
8 the hotel down to the Ferris wheel without incident. But on  
9 the way back, they were walking on the sidewalk that is  
10 adjacent to both Bummz Beach -- they would have to pass Bummz  
11 Beach first to make it to her resort, The Breakers. And while  
12 walking on the sidewalk coming back up from the Ferris wheel,  
13 she was walking close to the right. That's also testimony  
14 that she gave in her deposition. And that, because she was  
15 walking to the right with other people behind her, she tripped  
16 on this uneven sidewalk where these palm tree bushes were.

17           And that's our theory, but for the palm tree bushes,  
18 perhaps the crack would have been more easily discoverable,  
19 and we believe the defendant Bummz is responsible by their own  
20 admission for maintaining these palm tree bushes.

21           And this is a restaurant that holds itself out as a beach  
22 bar hangout, and it has multiple walking paths around it.  
23 They tout accessibility to the beach, walking ability to and  
24 from. We believe that evidence supports that they should  
25 certainly maintain the vegetation on the property. That's all

1 I have, Your Honor.

2 THE COURT: Thank you, ma'am.

3 Mr. Ipock, a brief reply?

4 MR. IPOCK: A brief retort. Judge, I think the Court  
5 will be happy to hear that, on a lot of those points, there's  
6 actually not disagreement. Let's, for purposes of summary  
7 judgment, say there's a crack. Okay. So what?

8 My client is a lessee of an adjoining landowner, and as  
9 to this -- now this kind of new exactly-as-she-stated theory  
10 of a palm tree, which she's admitted under oath had nothing to  
11 do with her fall, now that's their theory of it somehow  
12 obscuring a crack that is owned and maintained by the City of  
13 Myrtle Beach.

14 Judge, we go back to the law. How does that come  
15 together? The law says, to recover for damages by this  
16 plaintiff, there's got to be a defective or dangerous  
17 condition that was caused by a specific act of us or that we  
18 had actual or constructive knowledge. And that's assuming you  
19 are the landowner, which we're not.

20 So, Judge, you have got to have, at summary judgment, not  
21 just theory. You have got to have some amount. You have got  
22 to have a scintilla, not just an argument. You've got to have  
23 a scintilla of evidence, not just a scintilla of a theory.  
24 You've got to have evidence. And there's simply no evidence  
25 here.



1 earlier. It's marked as Plaintiff's Exhibit 4, but I think  
2 it's No. 1 for our transcript purposes. Do you see on the  
3 right-hand side a palm bush or some other shrubbery? Do you  
4 see that on the right?"

5 "Uh-huh."

6 "Did that cause you to fall?"

7 "I can't say that it did."

8 "Just so I understand that, is that a no, it did not  
9 cause?"

10 "No."

11 In her affidavit, you know, barely or not even two and a  
12 half months later, not even three months later, she says,  
13 "Since it was both dark and because a Bummz palm tree bush was  
14 hanging over the raised concrete, I couldn't see the danger  
15 and I tripped."

16 Another witness, whose affidavit was given -- and that is  
17 Antisha Peterkin, as I understand, the daughter of the  
18 plaintiff, says, "My mom tripped and fell on a crack in the  
19 sidewalk, which is represented in Plaintiff's Exhibits 4, 5,  
20 and 6." Those are attached to the affidavit.

21 The pictures show a crack, couple strands of what appears  
22 to be a palm bush on the side of the picture. Apparently, the  
23 owner of the establishment -- not the owner of the property  
24 but the owner of the establishment did admit that he is  
25 responsible for maintaining the palm tree or the property.

1 That would be in conjunction with the affidavit of  
2 Ms. Priscilla Peterkin more than sufficient to defeat a motion  
3 for summary judgment. But not even three months prior, the  
4 plaintiff was asked a specific question and said, "Regarding  
5 the palm bush, did that cause you to fall?"

6 "I can't say that it did."

7 "Just so I understand that, is that a no, it did not  
8 cause?"

9 Answer: "No."

10 Clear question. Clear answer. She says the palm did not  
11 cause her fall. The filing of an affidavit diametrically  
12 opposed to that answer, the Court hereby declares to be a sham  
13 affidavit prepared solely for the purposes of defeating a  
14 motion for summary judgment. The Court gives no credence to  
15 the affidavit of Ms. Peterkin that is filed in opposition to  
16 the motion for summary judgment finding it to be diametrically  
17 opposed to sworn testimony she gave under oath on the issue in  
18 question.

19 Based on that, there are no facts in dispute that would  
20 cause the Defendant Bummz Beach LLC; Bummz on the Beach, Inc.;  
21 d/b/a Bummz on the Beach Cafe to remain a party to this  
22 action --

23 MS. SPENCER: Your Honor, if I may --

24 THE COURT: Ma'am?

25 MS. SPENCER: Your Honor, the question Mr. Ipock --

1 THE COURT: I appreciate you don't agree with me. Thank  
2 you.

3 Mr. Ipock, prepare a proposed order to that effect.  
4 Electronically file it within seven days of today's date.  
5 Send it to opposing counsel. Please note it to my attention.  
6 Thank you very much.

7 MR. IPOCK: Thanks, Judge.

8 MS. SPENCER: Your Honor, for the record, may I bring the  
9 Court's attention to a matter?

10 THE COURT: Sure.

11 MS. SPENCER: Your Honor, we had multiple issues with the  
12 transcript testimony of William D. Rippy. Ms. Peterkin's  
13 affidavit was filed not as a sham. It was filed after we had  
14 to work day and night to cure a problem with the deposition  
15 transcript opposing counsel knew or should have known existed.

16 Mr. Rippy's deposition transcript arrived at my office  
17 with a misspelled name. We worked that their court reporting  
18 agency on May 24th to get it corrected. We then received in  
19 the mail on June 1st another transcript from this very same  
20 reporting office, and in that particular transcript, it stated  
21 that the deposition was taken by the defendant. Another  
22 problem.

23 So, again, Your Honor, the issues that we had to deal  
24 with to clear things that the defense should have worked on  
25 prior to -- because they knew about the misspelling in the

1 transcript -- they were certainly --

2 THE COURT: Are you telling me, ma'am, that the court  
3 reporter either deliberately or unintentionally did not  
4 properly take down the question and answer of Priscilla  
5 Peterkin on March 9, 2021? Is that what you're telling me?

6 MS. SPENCER: Your Honor, I'm telling you that we had  
7 multiple issues --

8 THE COURT: The only issue that can be --

9 MS. SPENCER: The authenticity of the transcript --

10 THE COURT: -- regarding this is whether or not she  
11 adequately and properly took down the exact answers and  
12 questions. If you can present to the Court evidence such as  
13 the original recordings that prove the question and answer are  
14 not as reflected in the deposition given to the Court, then  
15 you might have grounds for a motion for reconsideration.  
16 Okay? You have to show that's not accurate.

17 She clearly answers a question, the question at the heart  
18 of the matter, and does not state in any fashion that Bummz on  
19 the Beach is responsible. Clearly says "no."

20 Now, if that question and answer are not properly  
21 recorded down here, present that proof to the Court. Thank  
22 you, ma'am.

23 MS. SPENCER: Thank you, Judge.

24 (At 3:43 p.m., the above hearing concluded.)

25

